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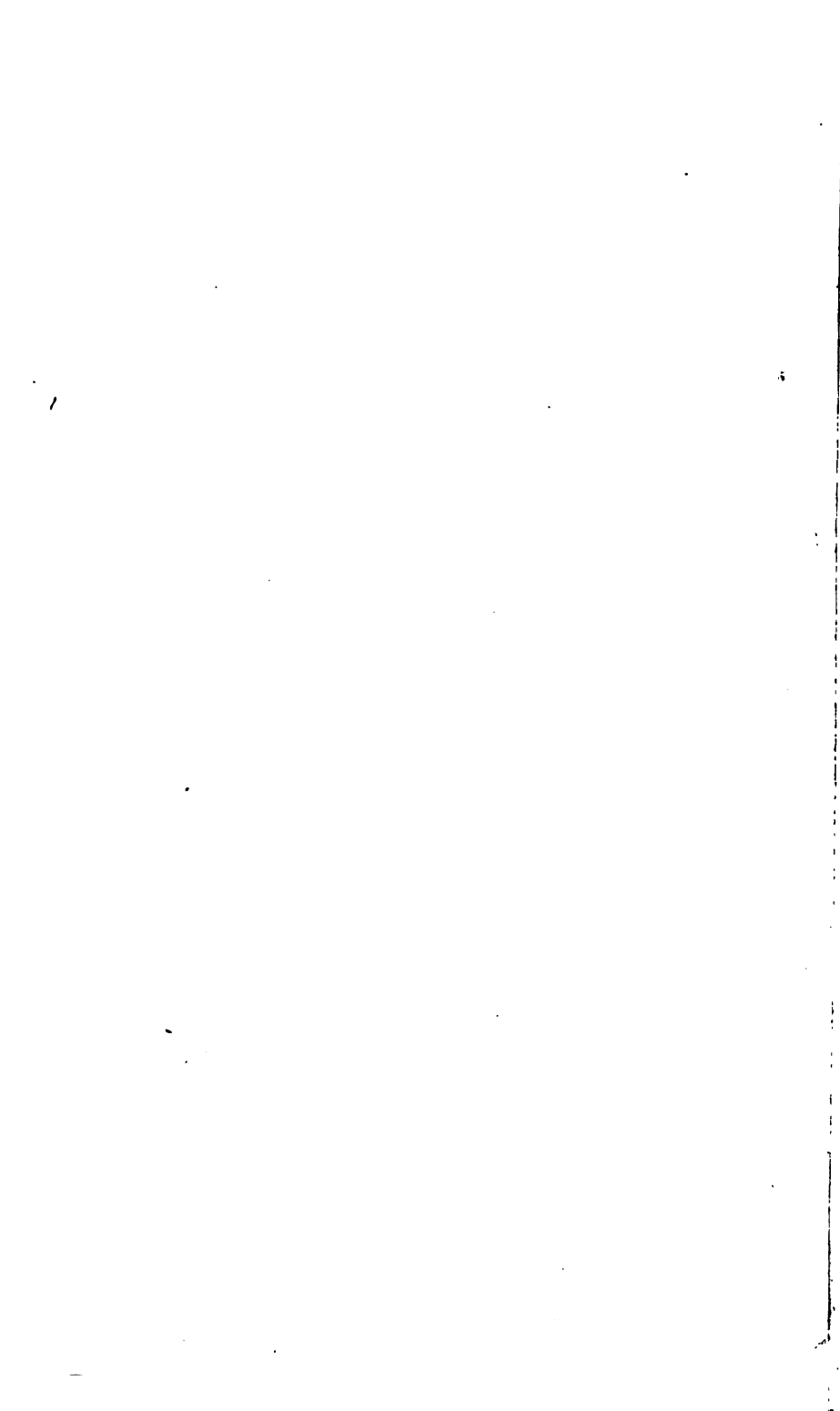
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R E P O R T

OF

THE PROCEEDINGS

OF THE FIRST AND SECOND TRIALS OF

The Cause of FISHER against WARD,

MASTER OF THE SHIP FISHBURN,

WHICH WAS DETAINED IN RUSSIA DURING THE LATE

Embargo on British Ships,

WITH

THE ARGUMENTS OF COUNSEL,

ON

T H E S P E C I A L C A S E

RESERVED FOR THE OPINION OF

THE COURT OF COMMON PLEAS,

RESPECTING

'The Wages claimed by the British Seamen,

DURING THE TIME THEY WERE DETAINED IN RUSSIA.

AND

AN APPENDIX,

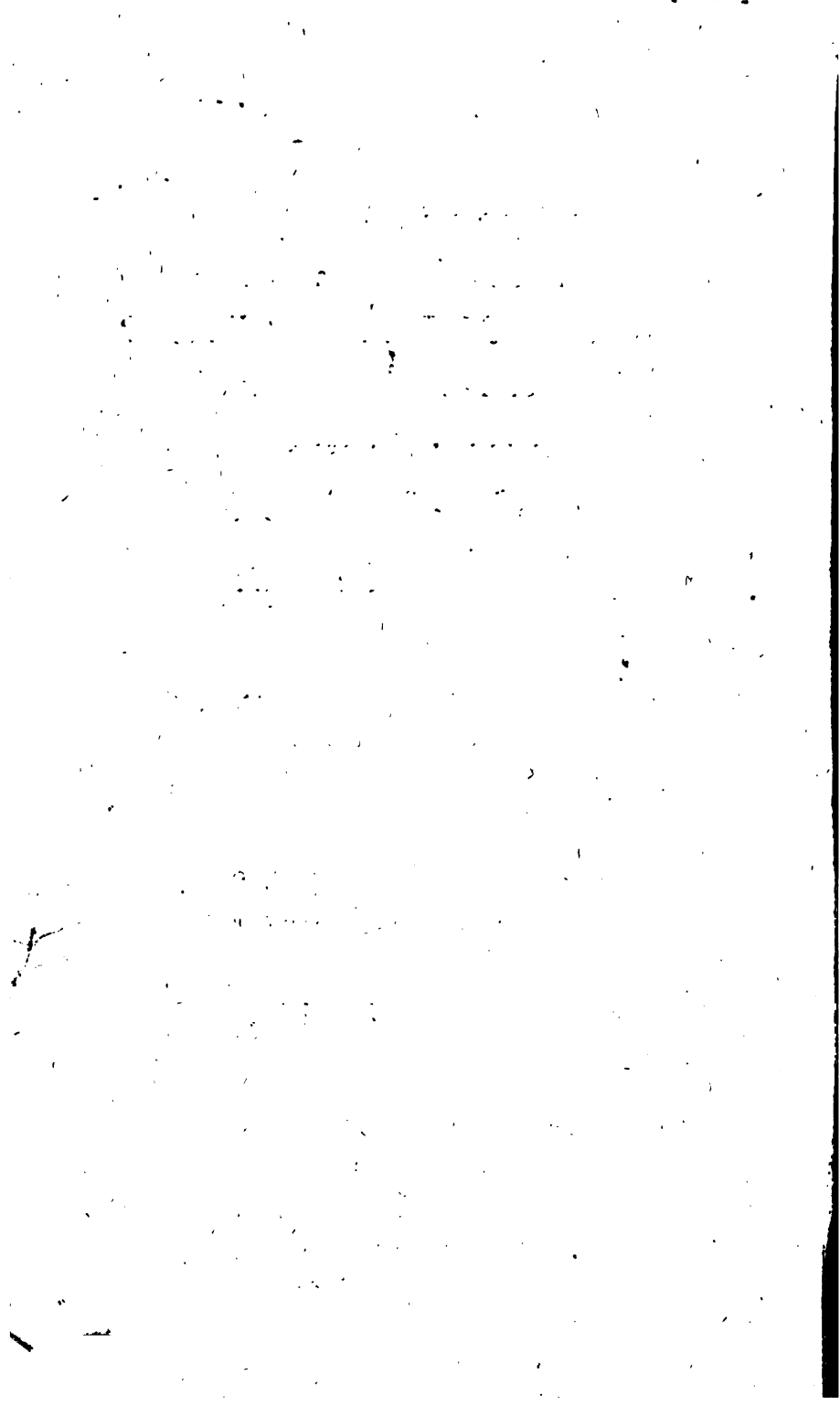
**CONTAINING SEVERAL INTERESTING DOCUMENTS RELATIVE TO
THAT MOST EXTRAORDINARY EVENT.**

L O N D O N :

PRINTED BY JOHN ABRAHAM, CLEMENT'S LANE,

**AND SOLD BY MR. BUTTERWORTH, FLEET STREET, AND
MESSRS. RICHARDSONS, CORNHILL.**

1802.



TO
THE HONOURABLE
THOMAS ERSKINE,
*Chancellor and Keeper of the Great Seal to His
Royal Highness the Prince of Wales,*

AND
ONE OF THE REPRESENTATIVES IN PARLIAMENT

FOR
THE ANCIENT BOROUGH OF
P O R T S M O U T H,

Et. Et. Et. Et.

THE
FOLLOWING WORK

IS,
WITH EVERY SENTIMENT OF RESPECT,
INSCRIBED

BY THE EDITOR.

ADVERTISEMENT.

FROM the anxiety which has naturally pervaded the minds of the owners and other persons interested in the several British ships which were detained in Russia, during the late most extraordinary embargo, from the numerous actions which have been commenced, by the British and Foreign seamen attached to those ships, since their return to Great Britain, to recover wages for the period they were detained in Russia, and from the difference of opinion which still exists as to the liability of the owners to pay such wages, the Editor has been induced to publish the following report of the cause of FISHER versus WARD, which is taken from the notes of a most correct and intelligent short hand writer.

The Editor flatters himself the publication will prove highly interesting to the commercial world, and in some degree useful to the Profession, as the legal questions which have arisen out of the Russian embargo, have hitherto remained undecided.

Special verdicts having been found in the two causes of BEALE versus THOMPSON and JOHNSON versus BRODERICK which are to decide the claims for wages by the British and Foreign seamen, who belonged to the British ships which were detained in Russia during the late embargo, it is the intention of the Editor to publish in a form similar to this edition, a report of the arguments and judgments in those two causes, and also in the cause of THOMPSON versus ROWCROFT, which was tried at Guildhall, at the sittings after last Michaelmas term, before Lord ELLENBOROUGH and a special Jury, in which a special verdict was found for the plaintiff. The forcible and impressive eloquence of Mr. ERSKINE was never more sensibly

felt than in his opening of that case, and the Editor considers himself peculiarly fortunate in having been favoured with the following correct note of it.

ampson
v.
McKee.

Mr. ERSKINE stated " That it was an action brought to recover the amount of the plaintiff's subscription to a policy on the freight of the defendant's ship Theseus, at and from Riga to London, and that the cause arose out of a great event which had caused much apprehension and dismay to the commercial world, in consequence of the embargo laid by the late Emperor PAUL on the British ships then in the Russian ports. That the question before the court was between the underwriters of the policies on the defendant's ship and the underwriters of the policy on her freight. The ship and freight had been insured previous to her arrival at Riga, and on the embargo being made known in England the defendant abandoned, being justified in so doing, to his underwriters both the ship and freight. On the accession of the present Emperor ALEXANDER the ship was liberated, and afterwards returned to England with a cargo when the underwriters on the freight claimed the whole of it, as it was abandoned to them by the assured, but the underwriters of the ship insisted that they were entitled to that part of the freight which had been earned after the abandonment of the ship to them, and the defendant who had received the freight, did not think himself warranted in paying it to either class of underwriters until it had been decided at law which of them were entitled to it."

Mr ERSKINE after stating the case addressed the Jury nearly as follows:—" This cause arises out of a conjuncture equally new and extraordinary to the moral, political, and the legal world. It arises from the violence and injustice of the late Emperor of Russia, who, for reasons beyond the reach of human investigation, was permitted, for a season, to have supreme power and dominion over so large a portion of the earth: who, after having been engaged in the pursuit of the same public objects as Great Britain, and bound to her by the most solemn ties of friendship and alliance, turned suddenly

“ suddenly round upon her with all the versatility and im-
 “ petuosity of a whirlwind, to lay waste, in the destruction
 “ of her trade, and in the denial of her privileges, the mighty
 “ fabric of her prosperity and power. In this parody of
 “ fury and wickedness, whilst our friendly flags were flying in
 “ his harbours, he seized and confiscated our ships, with their
 “ cargoes, and marched into an ignominious and perilous exile
 “ the most deserving of the subjects of our country. A blacker
 “ cloud never hung over this island or the world, than at that
 “ awful period, because this violence was intended as an attack
 “ upon the acknowledged laws of the civilized world, and was
 “ in the prosecution of a conspiracy against the maritime
 “ greatness of England. If the cause had not been to be tried
 “ upon admissions, I should have brought before you, by the
 “ testimony of the captain of the Theseus, a most affecting
 “ picture of this tyrannical proceeding. Indeed I was greatly
 “ affected by his letter, in which he represented it to his
 “ owners, and which forms a striking view of the general
 “ characteristic of our country. This honest man, a prisoner
 “ in a distant and unfriendly country, just setting out to a
 “ dreary and inhospitable desert, from whence there was but
 “ a feeble hope of his ever returning, expresses the confidence
 “ of a martyr in the protection of the Almighty, and says,
 “ that somehow or other, out of all this evil, HE would bring
 “ forth good. Gentlemen, his christian confidence was not
 “ disappointed: the tyrant suddenly fell to the ground; and,
 “ like the sun rising after a storm, his place was occupied by
 “ a successor, the direct reverse in every principle and feeling
 “ which goes to the constitution of the human character. Our
 “ ships were restored—the seals dropped from our confiscated
 “ property, and the chains fell off from the limbs of our de-
 “ livered countrymen, and he returned, as he anticipated, to
 “ the bosom of his family, and the delights of his country.
 “ Gentlemen, in speaking of this young Monarch, I do not
 “ speak of him altogether from this first act of his government,
 “ nor from the general report of his character, but from other
 “ evidence of it which has fallen in my way by accident, and

“ which is perfectly satisfactory to my mind upon the subject.
“ I anticipate that he will continue to fill up, by his virtues,
“ the breaches in society which his father’s vices had opened,
“ and that we shall see, more and more, a friendly intercourse
“ between Russia and Great Britain ; because, devoted, as I
“ believe he is, to humanise and civilise his remote, and, in
“ many parts, almost barbarous empire, how can he so well
“ accomplish his truly glorious purpose, as by cultivating a
“ friendship with our nation, which has humanised and civilised the world ? It may be said, that all this is a useless
“ preface, as the event is so notorious ; but if it be not a duty,
“ it is at least a privilege which I enjoy, from my situation, to
“ acknowledge, thus publickly, the beneficence of the Divine
“ Providence, when its dispensations have been so propitious
“ to our country and our kind.”

The Editor trusts, the learned Reporters of the Courts of King’s Bench and Common Pleas will not consider this Publication as interfering with their valuable Works ; the Editor having been induced to give it to the world with a view to remove, as speedily as possible, the misrepresentations which have been industriously circulated of the result of the trial, of the cause of FISHER against WARD ; and as the circumstances attending the Russian embargo and the legal questions which have arisen out of it, render it an insulated case, peculiarly affecting the commercial world, it is thought no objection can arise to the cases which have resulted from it, being published in a detached form,

London,

28th January, 1803.

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E R R A T A.

For *Hately* read *Hadley*,

P. 38, 39, 52

For *Balam* read *Barren*,

97

For *ana* read *and*

150



For the Plaintiff,

COUNSEL—Mr. Serjeant COCKELL.

Mr. Serjeant LENS.

Mr. ESPINASSE.

Mr. ALLEY.

ATTORNEY—Mr. RIPPINGHAM.

For the Defendant,

COUNSEL—Mr. Serjeant SHEPHERD.

Mr. Serjeant BAILEY.

Mr. GASELEE.

ATTORNEY—NAT. ATCHESON, Esq. F. A. S. P. R. I.

SECRETARY to the Society of Ship Owners of GREAT BRITAIN,
and to the Committee appointed at a General Meeting of the Owners
of the British Ships which were detained in RUSSIA
during the late Embargo.

RUSSIAN EMBARGO.

COURT OF COMMON PLEAS,

AT

WESTMINSTER;

FEBRUARY 18, 1802.

Sittings before Lord ALVANLEY and a Common Jury.

FISHER v. WARD.

MR. ESPINASSE opened the pleadings:

Mr. Serjeant COCKELL:

May it please your lordship: Gentlemen of the jury:

The present action is commenced by the plaintiff, who is a mariner, against the defendant, who was the captain of a vessel, on board of which this plaintiff sailed, to recover £40. and upwards, which is due to him on account of the voyage which he undertook to go with the defendant. It was a Russian voyage. Gentlemen, all of you know that the late Emperor laid an embargo on all British ships; which happened at that unfortunate period to be in any of his ports. The crews were taken out of the vessels, and they were marched up the country as prisoners of war, where they continued for a considerable space of time, till their liberation, which did not take place till after the death of the Emperor Paul: and it is for wages during that period, a period of time, in this instance, of near six months, that this action is brought. The plaintiff has been paid all his wages for the voyage outward and home, but he has not been paid for that period during which he was along with the captain up the country. And I conceive, with great submission to his lordship, this captain is

liable

liable to pay, not only the wages he has actually advanced for the outward and homeward bound voyage, but also for that period of time this poor man remained in Russia as a prisoner. I have stated to you, and all of you know enough to be acquainted with this, that a seaman is entitled to no wages unless the voyage is completed, if he has undertaken a voyage.

Lord ALVANLEY interposing. Brother, surely, surely, there is no occasion to be stating this to a jury; it will be a mere question of fact; it will be made a case of: it is a question of great importance, such as we had under deliberation on the last day of the term: only find the facts, after which it will be turned into a case, and decided in a more solemn way.

Mr. Serjeant COCKELL. I was only endeavouring to make the jury understand it, my lord.

Lord ALVANLEY. Very well.

Mr. Serjeant COCKELL. I am aware in this cause, that it will be necessary to have the opinions of the learned judges upon it. But I contend, on the part of the plaintiff, my client is entitled to wages during that period of time he was kept in prison in Russia; because the voyage was not ended, it was part of the contract this seaman had undertaken to fulfil, namely, to be on board of that ship until she returned back into the ports of this country: and this is not at all hard on the captain; because, if a man, being on a voyage for three years, had come within an hour of the port, and the ship, by any accident, should sink or be taken, he would lose every farthing of his wages. If she had happened to be lost by any accident at sea, he would have lost every farthing of his wages; and it is policy it should be so. Therefore, if an accident has happened to this crew, this captain has no right to complain when he is called upon to make it good. If the ship had been frozen in the ports of Russia, and could not have come back again till the next year, he must have paid the seamen their wages during the whole of that period. If an accident had happened to this ship at sea, so as to render it necessary to put the ship on shore to refit, and the voyage had been defeated ever so long, and if the voyage was at last completed, the captain must pay the seamen the whole of their wages: and, therefore, in this case, the captain ought not to complain. He had exercised his power over this man and the
rest

rest of the crew who remained under his controul. I shall prove the allowance made by the Russian government, and that the captain was the hand that received and distributed it to the crew: he did not distribute it all; why he reserved any part of it, I do not know: but this is clear, that he considered himself at that time as a person having dominion over these men. When they were liberated, they returned to the ship, which was repaired by the Russian government; for she went out, I believe, not in a very good condition, and she came home in a much better state; and the repairs were done at the expence of the Russian government.

When you have found the facts, the question will be discussed and the law decided by the learned judges of the court.

EVIDENCE FOR THE PLAINTIFF.

Mr. Serjeant LENS. Read the written admissions,
[*They were read by the proper officer*]

VIZ.

In the COMMON PLEAS.

JOHN ANDREW FISHER *against* ABRAHAM WARD.

We hereby respectively consent and agree to admit, upon the trial of this cause, the following facts, viz.

THAT, in the month of September, 1800, the plaintiff, a British subject, shipped and signed articles on board the ship Fishburn, then and still commanded by the defendant, to proceed on her then outward-bound voyage from London to Riga, in Russia, and back to England, at the rate of 6l. 16s. 6d. per month, wages.

THAT the said ship, with the plaintiff on board, proceeded on her said voyage, and arrived at Riga, in Russia.

THAT on or about the 1st December, 1800, and whilst the said ship was in such Russian port, an embargo was laid by the
Russian

Russian government on all British ships then in the ports of Russia, which continued from thence until the 28th May, 1801; and the said plaintiff and defendant were taken, by order of the Russian government, from the said ship, and sent into the interior of that country, where they remained during all that time, not being at liberty to depart from thence; and on the termination of such embargo the said ship returned to England.

THAT all wages have been paid the plaintiff, except during the period of the said embargo.

Dated the 10th February, 1802.

JOHN WATSON examined by Mr. ESPINASSE,

Q. Had your ship this cargo on board in coming home?

A. Yes, sir,

Mr. Serjeant SHEPHERD. Give me leave to ask you a question or two. You have brought an action also against this captain?

A. I have.

Q. Now, do you and the present plaintiff, and others, join to support each other in these actions, in paying the costs? Do you pay any part of these costs in case the plaintiff should not recover?

A. Yes.

Q. See that you understand me; I do not wish to entrap you. Each of you have brought an action against the captain?

A. Yes.

Q. Have you not agreed to join together, and to pay the costs of each other's action?

A. Undoubtedly.

Mr. ESPINASSE. Are you bound to pay any part of the costs if Fisher loses this action?

A. I shall pay my own, and Fisher will pay his.

Lord ALVANLEY. Is that so?

A. Yes, my lord.

Lord ALVANLEY. I thought you said otherwise.

Mr.

Mr. Serjeant COCKELL. You have employed an attorney in your own action?

A. I have.

Q. And you are to pay the costs of your own cause, and Fisher is to pay the costs of his if he loses it?

A. I am only to pay the costs of my own cause.

Mr. ESPINASSE to the witness. Now, Watson——

Lord ALVANLEY. Only let me know what the facts are.

Mr. Serjeant SHEPHERD. I will produce two or three witnesses who will tell you all that passed in Russia.

Mr. Serjeant COCKELL. We have almost ascertained it ourselves.

Mr. ESPINASSE to the witness. Now, Watson, you failed in this ship from this country to Riga?

A. Yes.

Q. You signed articles on board this ship?

Mr. Serjeant COCKELL. Sir, all that is admitted.

Lord ALVANLEY. He was a mariner on board this ship. Bring him to Russia.

Mr. ESPINASSE. You failed to Riga: how long were you kept there?

A. I was kept there six months.

Lord ALVANLEY. What was the name of the ship?

A. The Fishburn, my lord.

Q. An English ship?

A. Yes, my lord.

Mr. ESPINASSE. When were you liberated?

Lord ALVANLEY. First ask him when they arrived at Riga, and what happened.

A. We took two thirds of our homeward-bound cargo in.

Q. Did you take in any of your cargo before the Russian embargo was laid on?

A. We took in two thirds of our homeward cargo. We went out in ballast.

Mr. ESPINASSE. Now when the embargo was laid on, what was done with you and the ship?

A. When the embargo was laid on, which was on the 8th or 9th of

9th of the month of November, we were taken out of the ship, and were marched up the country.

Lord ALVANLEY. How long were you suffered to remain on board the ship, after the embargo took place, before you were marched up the country?

A. From about the 9th of November till the 28th we remained on board the ship, and were then marched into the country.

Mr. ESPINASSE. How long were you kept there?

A. About six months, to the best of my knowledge.

Q. When did you return to the ship?

A. We returned to the ship about the 28th or 29th of May.

Q. Was the captain and the rest of the crew with you?

A. The captain was in another room; but we were under the care of the captain.

Q. The crew were kept together?

A. The crew were.

Lord ALVANLEY interposing. How many did the crew consist of?

A. We had about seventeen hands on board.

Q. Do you include the captain?

A. There were seventeen hands with the captain.

Q. How many of them were English, and how many were foreigners?

A. We had four Americans on board, and two foreigners; but they did not go into the country with us.

Q. What then?

A. There were two Swedes and a Spaniard.

Lord ALVANLEY. These make three foreigners. Now ask him how they were disposed of.

Mr. ESPINASSE. Were all the rest English?

A. They were all English and Irish.

Lord ALVANLEY. Very well, they were all British.

Mr. ESPINASSE. The rest were British seamen?

A. Yes, sir.

Q. Now, what took place with regard to the foreigners? What was done with that part of the crew?

A. The Spaniard and the two Swedes did not go up the country with us.

Q. Were

Q. Were the rest of the crew then, the British sailors, brought up the country with the captain?

A. Yes, sir.

Q. Did the captain continue with you while you were so sent into the interior of the country, and keep the command over you while there?

A. He did.

Mr. Serjeant COCKELL. Were the four Americans marched up the country with you?

A. Yes, sir.

Mr. Serjeant SHEPHERD. They could not distinguish the Americans from the British sailors.

Lord ALVANLEY. You were marched five or six hundred miles beyond Moscow, were you not?

A. My lord, we were not in that quarter of the world; we were marched to a place called Dorpat, at the distance of 230 verses from Riga. Three verses make about two English miles; so that the distance in English measure was about 153 miles.

Lord ALVANLEY. How did you go?

A. We walked it.

Q. Did the captain walk too?

A. The captain had liberty to ride, because he had money. The captain went with us, and had the command of us all the time.

Mr. ESPINASSE. Now, who provided you with necessaries, and at whose expence?

A. From the Russian government we had so much a-day. We had a certain allowance, but that was insufficient, and we were forced to pawn our clothes.

Q. Was part furnished by the captain—Did he provide you any thing during that time?

A. No; nothing at all.

Q. Was the money issued to you man by man, or did it go through the hands of the captain?

A. It went through the hands of the captain.

Q. After you returned to your ship, was any thing done to her by the orders of the Russian government?

A. Yes, sir.

Q. Where

Q. When you came back, what was done to your ship by the Russian government?

Lord ALVANLEY. Did you come back as you went?

A. Yes, only we had no guards in coming back.

Q. When you came back, how did you find your ship?

A. The ship was made as good as the captain was pleased to have her. There was a survey on board, to see what was missing, and every thing was made good.

Mr. ESPINASSE. What was done?

A. We had her caulked all over.

Lord ALVANLEY. You say she was put in repair at the expense of the Russian government? Was any money issued by the Russian government to the ships or crews?

A. None that I know of. The ship was made good and fit for sea.

Q. Was any money issued on account of that ship?

Mr. Serjeant SHEPHERD. Ask him what he knows of his own knowledge.

A. None that I know of.

Lord ALVANLEY. You have made the captain the defendant here.

Mr. Serjeant COCKELL. Yes, my lord.

Lord ALVANLEY. Why did you not make the owners the defendants?

Mr. Serjeant COCKELL. There is a greater degree of difficulty.

Lord ALVANLEY interposing. There is nothing upon earth to be done but to tell the real truth, to state the facts fairly and candidly, and to let the law take its course. The question is, Whether the seamen ought to receive wages or not during that embargo? That is a question of law.

Mr. ESPINASSE. What did the captain pay you?

A. Twelve copecs a-day : a copec is little better than a farthing.

Mr. Serjeant SHEPHERD. The Russian government made an allowance to the British sailors, while they were detained in the country, of so much per day. But that was found not to be sufficient for their maintenance ; and therefore the British merchants agreed to make some addition to that allowance.

Lord

Lord ALVANLEY to the witness. You had something more added to the allowance made by the Russian government?

A. The captains of the different ships received something more, and did with it as they thought proper. I received some part of it when I came to England.

Q. Had you not the benefit of it while you were there?

A. No, sir.

Mr. Serjeant COCKELL. That went through the hands of your captain?

A. Yes, sir.

Mr. ESPINASSE. Do you know that any money came into the captain's hands which was not paid over to you?

A. I cannot certainly say that; but I know I received some of that money which I ought to have had from him while I was detained a prisoner in that country.

Lord ALVANLEY. Where did that money come from?

A. I do not know; but it was what I should have received while I was in that country; but he (the captain) kept it as long as he could.

Mr. Serjeant COCKELL. You were shipped under articles?

A. Yes, sir.

Q. Now, when you came on board again, after your imprisonment, did you come into any new bargain or agreement?

A. None at all.

Lord ALVANLEY. That is very material. You signed articles when you went out, but did not afterwards enter into any new articles?

A. I entered into no new articles.

Q. Did the captain ever tell you, you were to come on board again on any other terms, and on what terms you were to come back again?

A. No, sir.

Q. Did he ever tell you, you were at liberty to go where you liked?

A. No, sir.

Q. In the homeward-bound voyage, then, the captain never told you, you were at liberty to go to any other ship, or where you pleased?

A. No,

A. No, sir.

Q. What did he tell you—Did he say any thing about how you were to be paid?

A. His answer was, when the men were grumbling about being paid—I have got the worst of it; your wages are going on all the time.

Q. Did you ever hear him say that?—though that will not bind him unless it is agreeable to the law.

A. When the men were grumbling, he said—I have the worst of it; your wages are going on.

Lord ALVANLEY. This must be settled by an act of parliament.

Mr. Serjeant COCKELL. My lord, I hope the same thing will never happen again.

Lord ALVANLEY. You may as well hope there will be no more wars; a thing *optandum sed non sperandum*; though perhaps there may never be such an embargo as this again. But the same question will arise—What is the consequence of an embargo with regard to the payment of seamen's wages?

Cross-examined by Mr. Serjeant SHEPHERD.

Q. Mr. Watson, I will now ask you a few questions. How long had you been in Russia before this embargo commenced?

Mr. Serjeant COCKELL. We will take it from your log-book. It is our common wish that all the facts should be accurately and correctly stated.

Witness. We arrived, to the best of my knowledge, about the 12th of October at Riga, and the embargo was laid on, on the 8th or 9th of November.

Mr. Serjeant SHEPHERD. When the embargo was first laid on, was there any guard of Russian soldiers put on board the ships?

A. No, sir; but they were planted along the coast, so that we could not go on shore.

Q. When did the Russian guards come on board the ships—Was it on the day you were taken out, or before that time?

A. The Russian guards came on board the day we were taken out of the ship.

Q. Was

Q. Was your ship's company marched up the country alone, or with the crews of other ships?

A. We went along with the crews of other ships.

Q. Were you classed in certain numbers under the management of the different captains?

A. Every ship's company was under the command of their own captain.

Q. Do you mean to swear that?

A. In regard of misbehaviour on the road, if we misbehaved, they——

Lord ALVANLEY *interposing*. Brother, we are aware this is not the same as we had before from Cronstadt: this is from Riga, quite another part.

Mr. Serjeant SHEPHERD. When you say that every ship's crew was under the conduct of the captain all the time, do you not mean that the captain of each crew was made answerable for the bad conduct of the crew, and might get them punished if he pleased?

A. Yes, sir.

Lord ALVANLEY. If any body misbehaved, what was done?

A. They flogged him, sir.

Q. Did it, in point of fact, happen that any body was corrected?

A. None belonging to our ship's company.

Mr. Serjeant SHEPHERD. You say you were all put under your respective captains for your behaviour; if these captains complained of any of you to the Russian officers, then the Russian officers would punish you?

A. They would, sir. But our crew was orderly.

Lord ALVANLEY. All that is supposition, and there is no fact?

Witness. I have known it to be done, but not on our crew.

Q. No, but on other crews?

A. Yes, sir; that did not happen to our crew.

Mr. Serjeant SHEPHERD. Were you kept under guard all the time? Was there a guard set over you while you were up in the country?

A. There was no officer kept over us.

Q. I do not mean that; but whether you were under the control of the Russian officers.

A. Not at all.

Q. Were you not obliged to return to your quarters within a certain hour?

Lord ALVANLEY. Were you not called over every morning and every night?

A. No, sir; but we were obliged to be at the house, where we were quartered, by the hour of eight o'clock.

Mr. Serjeant SHEPHERD. Captain and all?

A. Captain and all.

Q. How far were you permitted to go from the place where you were lodged?

A. We might go about the distance of a mile and a half or two miles.

Q. Now you have told us some part of the cargo was put on board before you marched up the country?

A. Yes.

Q. How much of it was put on board?

A. Two thirds of it.

Q. Did you find that on board when you came back?

A. We did not.

Q. When you returned back to the ship you did not find the cargo on board?

A. No, sir; it was taken out by the Russian government.

Lord ALVANLEY. Was it restored?

A. Yes, sir.

Q. Was it put on board again?

A. It was.

Mr. Serjeant SHEPHERD. By whom?

A. We took it in ourselves again.

Lord ALVANLEY. Was all of it safe?

A. Yes, sir: there was no complaint.

Mr. Serjeant SHEPHERD. Now Watson, do you not know there was a certain allowance made by the Russian government—I know it was not enough—at so much per man—

A. Yes, sir.

Q. For captains and all?

A. For

A. For captains and all. The captain and mates had a dish of meat from the foremast man.

Q. How long were you up the country?

A. About six months.

Q. What town were you marched up to?

A. To a town they call *Dorpt* or *Dorpat*.

Lord ALVANLEY. How many English miles were you marched up the country?

A. About 230 verses, and three verses make about two English miles, so that we were marched about 150 English miles up the country.

Q. Then you were not marched a very great way up the country. The others, whose case was lately before this court, travelled 600 miles beyond Moscow.

Mr. Serjeant SHEPHERD. Did the two Swedes and the Spaniard return with you to England?

A. No, sir.

Lord ALVANLEY. You did not find them when you came back?

A. They were gone: they went to speak to the consul.

Q. When you came back they were gone?

A. Yes.

Mr. Serjeant SHEPHERD. Was there any American consul at Riga?

A. No, sir.

Q. Was there a Spanish consul there?

A. There was. But the captain would not have taken them back again.

Lord ALVANLEY. What are you speaking about? When they came from their consul, what did you hear, if you heard any thing pass between the captain and them?

A. This was before we went up the country.

Q. The Swedes and Spaniards were all gone before you came back?

A. Before we were marched up the country they went up to their consul. I do not know what passed between their consul and them: but when they came back they were not certain whether they would come on board again. The captain said, he would not take them on board again, unless they would enter into

fresh

fresh articles. They wanted to come on board again, but the captain said, No, I will not let you come on board again.

Lord ALVANLEY. How long were they absent?

A. About two or three days. I cannot be certain.

Mr. Serjeant COCKELL. Well.

A. The captain would not take them on board again unless they would sign fresh articles.

Lord ALVANLEY. Did you hear him say so?

A. I did.

Mr. Serjeant SHEPHERD. Watson, how came the Swedes and Spaniards to go out of the ship?

A. One reason was, they thought they were to suffer the same as the Englishmen, as being on board an English ship, and therefore——

Lord ALVANLEY. Finish what you were saying; and therefore what?

A. They thought they should suffer the same with us, and therefore they went away.

Q. They did not ask the captain leave? Do you know how they came to leave the ship?

A. They would not sign fresh articles, and so they left the ship; and the captain would not let them back.

Mr. Serjeant SHEPHERD. They thought they were going to be made prisoners as the English sailors were?

A. Yes, sir.

Q. And therefore they left the ship?

A. Yes, sir.

Q. And did they go to the consul when they left the ship?

A. They all went to their consul.

Q. You were all made prisoners?

A. There was an embargo laid on us. They were not certain whether they should come on board the ship or not; and the captain said, I will not receive you without entering into fresh articles.

Lord ALVANLEY. Now do let me understand this: Who were they who were to sign fresh articles? As you continued on board, why did not they continue?

A. The

A. The reason was this, he (the captain) wanted to catch this, to make them forfeit their wages.

Q. Do you recollect as well as you can. You say they came back again after they had been absent two days?

A. He said they had forfeited their wages by going away from the ship without leave, and that he would not let them come back without fresh articles.

Q. You heard him say so, did you?

A. I did.

Q. Do you remember them going away from on board the ship?

A. They went away directly. They went away as soon as they heard of the embargo. They went away before we were taken out of the ship.

Q. When they heard of the embargo they went to their consul, as you told us before: Do you know nothing of what became of the Spaniard?

A. He got a ship to come home again.

Q. How much did you receive when you came back to England, over and above your wages, and which you say you ought to have had in the country?

A. To the best of my knowledge, either four or five rubles.

Q. They did not pay you in rubles, in England. What did they pay you in English money? I see you will soon talk Russian instead of English.

A. About 10s. 6d. in English money; for the money I ought to have had when I was in Russia to do me good.

Q. How much over and above your wages out and home did the captain pay you after you arrived in England?

A. About 10s. 6d.

Q. No more? Are you sure of that? Recollect yourself.

Mr. Serjeant SHEPHERD. There was a contribution raised by the British merchants in Russia and in England, and some part of it that was raised in England had not reached these sailors when they were liberated; and therefore they received that part of it after they arrived in England.

Lord ALVANLEY. I am of opinion as they go for wages, during the time of the embargo it would be but fair, as the merchants

chants in England might think they were not entitled to wages, and for that reason they might advance them a sum of money—I say it would be but fair to set off that sum as against their wages during that period, if it shall turn out that the court shall be of opinion they are entitled to wages. It is a question of law whether they are bound to pay wages during this embargo. If, the merchants believing the sailors were entitled to no wages, and in order to make their situation more comfortable, a considerable sum had been paid, the sailors could not take advantage of that; but I should have said that ought to be taken in, on account of wages.

Mr. Serjeant COCKELL. That was paid on account of their wages.

Lord ALVANLEY. If it were only 10s. 6d. it is not worth talking about. If the merchants of this country thought, with very great foreign authorities, that by law the mariners were not entitled to receive wages during that period, and they did what the humanity of this country called upon them to do, to make a compensation for wages they had lost, and for the rigour they had suffered; at the same time, if that small sum was only received, it is hardly worth talking about.

Mr. Serjeant SHEPHERD. Though a considerable sum of money was raised by way of contribution for the English sailors, it is not the wish of the merchants to have it set off.

Lord ALVANLEY. I understand the merchants say, by the law of England, during an embargo, the sailors have no right to any thing but maintenance. Some foreign writers say they are to have wages. Now the court is to decide whether they are entitled to any wages, and what, or not. Now, Brother Shepherd,

Mr. Serjeant COCKELL. Brother, have you any facts to add?

Lord ALVANLEY to the witnesses. What passed when you came home?

A. The ship came home, and delivered the cargo at Plymouth for government.

Q. Do you know what freight was paid? Was it so much per month or per voyage?

A. The ship was chartered for the freight.

Mr. GASELEE. The seamen's wages were by the month.

Lord

Lord ALVANLEY. State then in your case what the charter-party was. If by the law of England an embargo is only the suspension of the voyage, but no interruption of the contract between the Freighters, Sailors, and Merchants; if the freight was at so much *per month*, the freighted would continue getting freight all the time. On the other hand, if it was so much *per ton* or the voyage only, it might throw the hardship the other way.

What (said his lordship to the witness) did you receive?

A. When we came to England he paid me for the time I was on board the ship, and not for the time I was in the country.

Q. And I suppose he paid the others the same; and you say that is all that has been paid you, except 10s. 6d?

A. Yes, sir.

Q. How much were the articles?

A. Six guineas and a half per month.

Mr. Serj. COCKELL. My lord, that is all on the written admissions.

Mr. Serj. SHEPHERD. The charter-party, if it becomes material, may be stated.

Mr. Serj. COCKELL. We shall state it from the charter-party.

Mr. Serj. SHEPHERD. I have only one or two facts to add. As this is certainly to be a case, it is not necessary I should take up these gentlemen's time. It is a question of law on the facts, and whatever the law is, it must take place. My lord, in the first place, I will put in to your lordship his Majesty's proclamation of the 14th of January, 1801.

Mr. Serj. COCKELL. Brother, before you put it in, I should wish to know how you make it evidence?

Lord ALVANLEY. It is evidence of the fact that he issued that proclamation.

Mr. Serj. SHEPHERD. It states this, my lord*, "Whereas his Majesty, &c."

Mr. Serj. LENS. It is legal evidence, there was such a proclamation issued.

Mr. Serj. SHEPHERD stated the substance of it.

Lord ALVANLEY. Let that be put down.

Mr. Serj. COCKELL. We shall put it down, my lord.

This proclamation was issued on the 14th of January, 1801, and appeared in the Gazette on Tuesday, January 20, 1801.

Captain REYNOLDS examined by Mr. Serj. BAILEY.

Q. What ship did you command?

A. The Theseus.

Q. Were you at Riga at the time the embargo was laid on by the Russian government?

A. Yes, sir.

Q. I believe you were also marched up the country with the crew of the Fishborn, were you not?

A. Ye, sir.

Q. How did they take you from on board your ship?

A. With a guard of soldiers, sir.

Q. How long did the guard of soldiers continue with you?

A. The guard of soldiers continued with us till we got to Dorpat. The captains were at liberty to go on at some distance to get accommodation for the men on their arrival.

Q. Was each ship's crew under their own captain?

A. Not particularly, but with a view to have an eye over their conduct: an English sailor was punished by one of the Russian officers for misbehaviour on the road.

Lord ALVANLEY. They punished him without his captain's intervention?

A. Yes, my lord.

Q. But you said the captains were to have an eye on their conduct. Were they responsible for their conduct to the Russian government?

A. They were so far responsible that they were to report their conduct once a-week.

Mr. Serj. BAILEY. When you got to Dorpat how were you placed there?

A. We were quartered on the different gentlemen's estates in and about the town.

Q. Were

Q. Were any soldiers there for the purpose of watching you ?

A. There were two regiments of soldiers in the town. What their purpose might be I cannot say.

Lord ALVANLEY. Were you quartered in barracks or in different houses ?

A. In different houses, my lord.

Mr. Serj. BAILEY. How far might you go ? Were you restricted ?

A. We were to be at quarters at eight o'clock.

Q. Were you restricted as to limits as well as to time ?

A. About two miles were the limits.

Q. What allowance had you for each man in English money ?

A. About three-pence halfpenny a-day.

Lord ALVANLEY. You, captains, as well as the men ?

A. Yes, my lord, we had the same allowance as the men.

Q. You had about three-pence halfpenny per day in English money ?

A. Yes, my lord.

Mr. Serj. BAILEY. Was the money issued to the captains or to the men ?

A. The money was issued to the captains.

Q. What was the reason of that ?

A. I apprehend it was because they were distributed in different parts of the town, and some so far as three miles from the town.

Q. Now from the time you were taken from on board till the time you were permitted to return, were you prisoners ?

A. We considered ourselves as prisoners.

Lord ALVANLEY. They were prisoners.

Mr. Serj. BAILEY. Were you in all respects prisoners of war ?

Lord ALVANLEY. They acted towards you as if you were ?

A. We were provided for by them up to the extent I have mentioned.

Q. Was that sufficient for the maintenance of every man ?

A. It was very little for the maintenance of any man.

Q. I do

Q. I do not know it was too little in that country, I want to know that from you ?

A. They subsisted some time on it, but it was very little. They had something in addition from the English merchants.

Q. When did they begin to receive that ?

A. It might probably be at the end of two months.

Q. The allowance by the Russian government was a subsistence however ?

A. Yes, my lord. They did subsist on it. It was too little an allowance, though more than their own soldiers had.

Q. Now you cannot tell how much they received besides over and above their wages out and home. This man, the last witness, said he only received 10s. 6d.

A. He received more than that. That 10s. 6d. was what had not come forward at the time we were liberated.

Q. He says he received three-pence halfpenny per day from the Russian government; did the English prisoners receive any thing more than three-pence halfpenny a-day while they were detained in the country ?

A. Yes, my lord; they received nearly three-pence a-day more through the British merchants at Riga.

Q. When did it commence ?

A. In about two months after we got into the country.

Q. Then about two months after you got into the country a subscription was set on foot by the English merchants, by which an allowance of three-pence or three-pence halfpenny a-day was made to the sailors, in addition to the same sum that was allowed by the Russian government ?

A. My men had it.

Q. And you suppose the crew of the Fishbørn received the same ?

A. I suppose so.

Q. Which allowance was nearly as much as that of the Russian government, which the men received for subsistence-money ?

A. Probably there might be some deficiency in the Russian subsistence-money which was not paid for nearly six weeks. I believe, my lord, Captain Ward's men were deficient about

six weeks; and probably the last witness might receive the 10s. 6d. which he has mentioned.

Lord ALVANLEY. No, no, it was after he came back here. Let us have back John Watson.

JOHN WATSON further examined by Lord ALVANLEY, &c.

Q. I asked you, Watson, whether you received any thing over and above twelve copecs a-day, and you said No. Did you not receive, by way of subsistence, something additional from the British merchants at Riga?

A. It was given to the captains, and I did not receive money sometimes for a month. I should have had this money by rights in Russia.

Q. But do you mean to say while you were in Russia you only received three-pence per day. I suppose you received as much as the men of the *Theseus*?

A. I cannot tell what they received, but I know what I received myself. It was paid into the captain's hands, and he might do with it what he pleased.

Mr. Serj. SHEPHERD. I do not wish to set it off, I wish that to be understood.

Lord ALVANLEY. That is all.

Mr. Serj. SHEPHERD. I wish to examine the witness to ascertain this one fact, when they took them out of the ship. Did the Russians take absolute possession of the ship?

Mr. Serj. COCKELL. I dare say they did.

Lord ALVANLEY. The cargo was received, and when they returned they found no cargo; but it was restored to them.

Mr. Serj. COCKELL. The Emperor Paul was dead.

Lord ALVANLEY. Then that is all, gentlemen, is it?

Mr. Serj. BAILEY. The cargo was taken out, and the ship was in possession of the Russian government.

Mr. Serj. COCKELL. Have we not got the fact, that they left the ship with two thirds of the homeward-bound cargo on board? And when they were taken out the Russians had taken possession of her.

Lord ALVANLEY. Where was the cargo of the ship put?

A. It was put into a warehouse.

Mr.

Mr. GEORGE TODD examined by Mr. GASLIE.

Q. I believe, sir, you are a merchant at Riga?

A. I am a merchant at Riga.

Q. Do you know whether the Russian government took possession of the vessel called the Fishburn among others?

A. I know they did, and kept possession of her during the whole time the men were up the country.

Lord ALVANLEY. They took the cargo out and put it on shore?

A. They kept it under their care.

Q. Now what is the whole amount of the wages according to the articles, supposing the voyage to subsist the whole time?

Mr. Serj. COCKELL. By the written admissions they amount to 45*l.* 17*s.* 6*d.*

Lord ALVANLEY. Gentlemen of the jury—You will find a verdict for the plaintiff to that amount, subject to have a case made for the opinion of the court, whether, according to the law of this land, this plaintiff is or is not to be paid these wages, or any part of them, and what, during the time this ship was in the possession of the Russian government, and while the captain and crew were sent up the country and detained as prisoners. This is a matter of very considerable consequence. And in case another war happens the merchants will provide what shall be done. It is very easy to do that by articles. But that has not been done here, and therefore the law must determine on whom the loss is to fall. It is very hard on the merchants if they have undertaken to bring a loading from Russia at so much *per ton*. During the time the ships have been kept there they might have performed several voyages. They have been kept all this time, and therefore the owners of these ships will receive nothing at all, and the question is, Whether during this time they are obliged to pay the sailors their wages? That ought not to be decided by a judge and a jury. I conceive after the facts are ascertained it ought to receive the opinion of the court.

Mr. Serj. SHEPHERD. The best way is to put it in the shape of a case, and let it be turned into a special verdict, if it shall be found necessary.

Mr.

Mr. Serj. COCKELL. I will tell you why I have a great objection to that, considering the situation of the seamen....

Lord ALVANLEY. Do you except to its being turned into a special verdict if it shall be found necessary?

Mr. Serj. BAILEY. A great sum of money is depending on it.

Mr. Serj. SHEPHERD. In every way in which it can be considered it is most important, because it is necessary to have a full decision on the subject.

Mr. Serj. COCKELL. The importance of it does not arise out of the difficulty.

Lord ALVANLEY. You must leave that to the court. The court if they think it necessary will desire it to be turned into a special verdict.

Mr. Serj. BAILEY. That is all we want.

Lord ALVANLEY. If the court should think fit, they will order it to be turned into a special verdict.

Mr. Serj. COCKELL. Then I think the jury must find the facts.

Lord ALVANLEY. Then the case must be settled as a special verdict. There certainly was no new contract. The only question is this, Whether the contract subsisted to all intents and purposes? See what the evidence is—The captain says to the Swedes and Spaniard who had left the ship without leave, Go about your business; you have forfeited your wages by going away from the ship. There is nothing at all of that in this case, but the question is, Whether during an embargo a sailor is entitled to his wages?

Mr. Serj. COCKELL. There was a similar case in the court of King's Bench.

Mr. Serj. BAILEY. That was a very different case. The sailors there were on board the ship.

Lord ALVANLEY. It is a very hard case for the owners.

Mr. Serj. SHEPHERD. It is a case of hardship either way, but the law must take its course.

Verdict for plaintiff for 45l. 17s. 6d. subject to a case for the opinion of the court.

EASTER TERM.

COURT OF COMMON PLEAS,

May 18, 1802.

FISHER v. WARD.

MR. SERJEANT LENS. My Lords, this was an action of assumpsit brought by the plaintiff, who is a British seaman, for wages, and tried at the sittings after last Hilary term, when a verdict was found for the plaintiff for the sum of 45*l* 17*s*. 6*d*. subject to the opinion of the court on the following

C A S E.

“THE plaintiff, on the 6th of September, 1800, executed articles to serve as a seaman, in a British ship called the Fishburn, of which the defendant was master, at the wages of 6*l*. 16*s*. 6*d*. per month, on a voyage from London to Riga and back again; and he accordingly sailed on board the said ship, which arrived at Riga on or about the 12th day of October, in the same year.

“On the ship’s arrival at Riga the captain proceeded to take in a cargo of timber and deals, and had shipped about two thirds of it, when on the 8th or 9th of November an embargo, by order of the Russian government, was laid on all British ships in the Russian harbours.

“From the time when the embargo took place, guards were placed along the shore, to prevent the crew escaping from the ship, until the 28th or 29th of the same month of November, when such part of the crew as were British and Americans were taken

taken out of the ship by a Russian guard, and marched 150 miles up the country, to a place called Dorpat; but such part of the crew as were not British or American subjects, namely, one Spaniard and two Swedes, were permitted by the Russian government to remain at Riga.

" The crews of other English ships then at Riga were also, at the same time, marched to Dorpat, and the crew of each ship marched together under the care of their respective captains, who were made responsible for their good behaviour, and who, in case of misbehaviour, was to complain to the officer who commanded the guard which accompanied them.

" The captain and the crew (including the plaintiff) remained up the country until the 28th or 29th of May; during which time they were kept in at certain hours and within certain bounds, and from the time they were taken from their ships, they were treated as if they had been prisoners of war.

" During the time the captain and crew were up the country, the cargo had been taken out of the ship by the Russian government, and deposited on shore, and the ship was taken possession of by the Russians.

" That on or about the said 28th or 29th of May, the said captain and crew were marched back in the same manner to Riga.

" That the ship afterwards took in a full cargo and returned to Plymouth, according to the charter-party, and the plaintiff did his duty as a seaman during the said voyage, and the ship received full freight at six guineas per ton.

" During the time the captain and crew were up the country, the Russian government made a certain allowance, by the day, to each man; but it was so inadequate, that they were forced to pawn their clothes for further support: the money issued by the government for their use was paid by the hands of the captain, to whom also an allowance was made the same as to the common men.

" After the captain and crew returned on board the ship, the Russian government sent a person on board to repair the ship, which had suffered during the absence of the crew, and she was caulked and repaired at the expence of the Russian government.

" No

"No new articles were signed or asked for by the captain, nor did any thing pass between the captain and the British and American sailors, respecting any new contract; but the plaintiff and the rest of the crew returned to England without making any new bargain.

"Immediately on hearing of the embargo, the Spaniard and the two Swedes had left the ship, to avoid being made prisoners with the English, and went to their respective consuls. Two days afterwards they returned; but the captain refused to take them on board, unless they would sign fresh articles, alleging that by leaving their ship they had forfeited their wages; this they refused, and in consequence never again joined the ship.

"The plaintiff received all his wages for the voyage, according to the articles, of 6l. 16s. 6d. per month, except during the time the ship was in possession of the Russian government, and the captain and crew sent up the country and detained as prisoners, as before stated.

"The question for the opinion of the court, Whether the plaintiff is entitled to be paid wages during that period? if he is, the verdict is to stand, if not, the verdict is to be entered for the defendant.

"If the court think it proper, the case is to be turned into a special verdict.

"JOHN LENS for the Plaintiff,

"JOHN BAYLEY for the Defendant."

Mr. Serjeant LENS then said, The question for the Court is, Whether under these circumstances the plaintiff is entitled to recover? My lords, it seems to me, from the case I have stated, the general question which was argued in this court the other day in a similar case * will hardly arise; for it seems that the facts stated put an end to all question on the subject, and clearly determine the meaning of the parties. Every man who looks at the conduct of the captain towards that part of the crew that were

* *Quere.* If not the case of *Branch v. Harper*? The plaintiff, in that case, was a foreign seaman who belonged to one of the British ships which were sequestered in Russia at the same time with the *Fishburn*.

not British or Americans; every man who views the captain's conduct to the Spaniard and the two Swedes, and considers the different conduct which he held towards that part of the crew that were British and Americans; must see that, in the captain's judgment, the contract with regard to the British and American sailors that were on board was a subsisting contract. His conduct shews, that in his apprehension the contract, with regard to the Spaniard and the two Swedes, was considered to be at an end; because the parties themselves had left the ship, and had gone away. In consequence of that they had put an end to the agreement; and, therefore, when after they had been absent from the ship two or three days, and wished to return, having made an application to the captain for that purpose, he refused to take them on board unless they would enter into new articles. The conduct of the captain, in the case of the British and American sailors, shews plainly, that in the apprehension and understanding of all the parties, as applied to the British subjects and to those of America, that the contract stood in a situation completely different from that of the other persons who had left the ship. It is an admission by the parties themselves, the strongest evidence that can possibly be produced, that they considered the contract with the Spaniard and Swedes was at an end, because these parties had chosen to abandon the ship, and to put an end to their agreement; but that, with regard to the others, that it was a valid subsisting contract. This is clear from the different manner in which they were treated from the other two. This being the case, the inference to be drawn from the conduct of the captain is clear and indisputable, and clearly ascertains the meaning of the parties. It leaves the general question, and what is the effect of an embargo, quite out of the present question; because the parties have chosen to put their own construction upon the contract. There was a time when it might be argued, that this embargo that was laid on British ships left it in the option of the parties to dissolve the contract or not as they pleased. It might have been argued, that the effect of the embargo was, that the contract might or might not proceed at the pleasure of either of the parties. But supposing either or both to have had that power, but that instead of exercising it, instead

Instead of considering the contract at an end, they have chosen to proceed on it as a subsisting contract, and marked the difference where it is to be considered to be at an end as far as it relates to the Spaniard and two Swedes; whatever may be deemed the effect of an embargo, when the parties by their conduct have considered it as an existing contract; I submit it must be so considered by the court. There is no law to prevent the parties from so considering it. There is no law that says it is not legal for the parties to make it a subsisting contract: and the captain so considers all these men as continuing under the original contract; and does its express terms bring them back to England on the old contract. If that be so, whatever may be the case with regard to the effect of an embargo, as I have already observed; the question hardly arises in this case, when they consider themselves as acting under the old contract. It is an express declaration of the parties themselves, who were certainly competent to consider the contract as still subsisting. Putting the argument as strongly as may be on the other side: if they knowing that such might be the effect of the embargo; if they knowing they had an opportunity of putting an end to their engagement, and do not choose to put an end to it, but choose to consider it as a subsisting bargain, what objection can there be to it in point of law? After all this is over, they returned to Plymouth; and completed their voyage. Was there any objection in point of law to their coming to such a proposition, to consider the original agreement as still binding? There is no reason why it should not be considered legal. The parties, if they had a power to put an end to the contract, have not done it, but considered it as a subsisting contract; and they were competent to enter into such a proceeding. The question for your lordship's decision comes to be no more than this: Supposing the effect of the embargo to be, that the instant it took place, the effect of it was to empower either of the parties to put an end to the contract, and the parties did not do so, but still considered the contract as existing; the only question is, Whether the plaintiff is not entitled to recover on the foot of the old engagement? There was no new engagement entered into, or if there was, it was, in fact, to continue the old contract. It comes to the same thing, whether you suppose that the old contract

Contract always subsisted, or whether you suppose that the embargo necessarily put an end to it, but that the parties by their own voluntary conduct revived it. If the court should think it is plain, from the conduct of the parties, that they made an election not to vacate the contract, but to continue it; they not having chosen to take any notice of the effect of the embargo; it is to be considered, I submit, as out of the question. The *Fishburn*, after having been detained six months in Russia, returns from Riga navigated by the former crew, with the exception of the Spaniard and the two Swedes. In this view of considering the case, the contract is to be considered as if no interruption had taken place. If that be so, it will not be necessary to trouble the court with the other question in the case. After the case was so ably argued the other day, and every authority cited, I do not flatter myself I could put the argument in a new light, or make any addition to what was then urged: but after all the authorities that were then cited, I take it this is a new case to be decided on its own principles, and on its own circumstances; because none of the authorities that were cited upon that occasion touch the particular question in this case.

With regard to the general effect of an embargo, from which I submit there are no circumstances in this case of sufficient consequence to distinguish it; an ordinary embargo is so far from putting an end to the contract, that when the embargo is removed, the voyage may proceed in the same manner as before.

Mr. Justice HEATH interposing. But the question is, Whether it suspended the contract in this case?

Mr. Serjeant LENS. If it suspended the contract during that interval, what is to be the effect of it? Is it that during the time it continues, the sailors may go about and enter into other contracts that may benefit themselves, and that are not inconsistent with the performance of their duty in this ship, when the embargo shall be at an end? In this case, these sailors could not do that. Their situation of prisoners up the country precluded them from entering into any other contracts that might be beneficial to them. Then we may use the word suspend. You may, in the mean time, apply yourself to other business, or make other contracts; but you must constantly keep yourself in readiness

nels for discharging your duty on board the Fishburn, the moment the embargo is taken off. Or is the effect of the embargo to put an end to the contract, with liberty to either of the party to go on with it, if he pleases. The duration of this interval or of this embargo is uncertain. As the embargo is attended with that uncertainty, if the parties resume their former situation, that may be called a suspension: it is a continuance of the contract. When the embargo commences, though each of the parties were at liberty to break off the contract but do not, the contract there may be said to be suspended: but if the contract is not continued or revived after the embargo, that contract in substance is not a contract suspended, but it is a contract put an end to; it gives leave to either of the parties to say whether that contract will ever be carried into effect afterwards. If, when the embargo ceases, they are not ready, and they are not obliged to perform the remainder of the contract, surely the contract is not suspended, because it was in the option of either of the parties whether the renewal of it should ever take place or not: and if it was not renewed, what is it in substance but dissolving the contract *pro hac vice*? leaving it to the parties to put themselves under the same conditions; but that is not a suspension of the contract, but is, in fact, leaving it open to the parties to resume it or not, to continue it, or to consider it as at an end, according to the option of either of the parties. If so, I submit that it is not a suspension, but a necessary determination of the contract, subject to this, that if both parties please, and if it suit their convenience, it may be revived and carried into effect hereafter: I submit that is quite an anomalous case, and I am not aware of any contract of that sort. As I conceive, when either of the parties, in consequence of an embargo, if that be the effect of it, makes an election not to pursue the contract, that is in substance putting an end to the old contract: and whenever they come again, that is in effect reviving the old contract. But in this interval they were at liberty to pursue it or not. If they are at liberty to pursue it or not, the old contract does not bind them; but the old contract, if not put an end to, is so far from being suspended, that it hangs over their heads all the time, compelling them, when the time arrives, to carry it into effect, and leaves

leaves no other liberty but to carry it into effect in any way that is consistent with the contract: what is that then but the continuance of the old contract to all intents and purposes?

My lords, what should make this to be considered a continuance in the service, according to the continuance of the contract? If the sailors are liable to hold themselves in readiness, if the embargo lasts only a few days, and if, in the mean time, they are to be considered as performing the same contract; what is this, but being under the operation of that contract? Why are they, with the captain, taken out of the ship, and carried up the country, but because they are serving under the contract? Why were they made prisoners, but because of their relation to the captain and ship, and because they were in the service of the ship? Why were they so treated, but because they were serving under the operation of the contract? Why were they made to perform the most severe penance during that interval, but because they were in that situation, and from their being in the execution of that service? Is it just or reasonable that they should lose all benefit from this interval? Is it consistent with the principles of common sense that they should endure the most cruel and severe part of their services, without any recompence whatever? I shall submit to your lordships, that it is in plain common sense a continuance of the old contract. I ask this question: Did they not, during the embargo, suffer more irksome and more distressing service, whatever their reward may be, than they were aware of when they entered into this contract?

My lords, it seems to me that is the fair way of considering the subject. I give no opinion as to the effect of the embargo; but if it was to put an end to the contract, and these persons went up the country, and when they were up the country, were treated with all the harshness and severity possible, because they had been navigating this ship, and had been in that service, ought they not to be paid their wages? If the effect of the embargo was to put an end to all relation between master and mariner, it has not done so in this case: the parties themselves have demonstrated, by their conduct, that it was not determined; but, on the contrary, a subsisting contract, as they did, in fact, return again, and brought the ship to this country. According to the fair,

fair, plain, simple way of considering it, this was a part of the service most irksome, most severe and rigorous, in all its parts, and for which, in every principle of policy and justice, these poor men ought to receive a compensation. I am not able to find any case that bears much analogy to this embargo. There is the case of Chandler and Greaves, 2 H. Black. Rep. 606. That was the case of a seaman, who was disabled from doing his duty on board, by a blow from the fall of a piece of timber; and yet it was held he was entitled to wages for the whole voyage. He earned wages from this country out to Philadelphia, and the voyage was back again to this country. He was left behind at Philadelphia, and it was contended that put an end to the service. But he received the recompence that belonged to that service. He received his wages for the homeward-bound voyage, though he did not return to England in that ship.

With regard to the embargo itself, I cannot find any thing like it. What was said the other day, when the general question was argued much more forcibly than I can pretend to do, shews there are no cases that can be cited in point. Valin does not leave one, any clear line as applicable to the laws of England. He professes to draw no clear line as applicable to their own laws. What he says seems to be no more than inferences, and commentaries on those ordinances. He says, merely, that this is the fair way of considering such an ordinance, and the ordinance being so, not because it is the law of any particular state, but of those who choose to adopt it. This author gives his opinion what the inference is, that is consistent with that rule. But giving the full effect to his observations, whether his inferences are right or not, he has not drawn any general line to go by. He does not mean to do that. It is generally an arbitrary line. In one case one fourth shall be paid, and in another case one half shall be paid. It is merely arbitrary what shall be paid. It is no more than this, Where the payment is to be made in gross, he does not know how to deal with it, and therefore he says you must take the whole of it; because he does not know any other line to draw, it being a difficult case. And, therefore, it does not seem to me that the cases, which were brought forward when the general question

was discussed have a tendency to throw any new light upon the subject. This case therefore must be determined from the nature of the thing deriving assistance as far as possible from the nature of the embargo, the common law of this country, and the general law of nations. Great stress will be laid on the nature of this embargo. It is either an embargo or not. The case states it to be an embargo. And if from the peculiar circumstances you come to argue they were peculiar to itself, and not like any other, that it lasted six months, and therefore, although it is denominated an embargo, it was not an embargo, but a capture, and if so...

Lord ALVANLEY interposing. No, no, let them call it what they will, we shall see if it is an embargo; if we find it had the effect of a capture, we shall treat it as such. The counsel choosing to use a particular word cannot bind the court.

Mr. Serjeant LENS. I say this was an embargo. The court will find difficulty in considering this as a capture; applying all the consequences of capture to it; the difficulties will be found to be as great or greater than if you consider it as an embargo. It was certainly an anomalous case, and was not accompanied with those circumstances that usually attend an embargo. If it was a capture, being at liberty as we are to call it a capture; and supposing what they choose to call an embargo, was not an embargo, but a delivery after the capture: if this was a capture, it put an end to every thing. It was a loss of the voyage, of freight, seamen's wages, and every thing. It seems however to be an embargo. But taking it certainly in the strongest way, is to find it was a capture and recapture. Though it is an embargo attended with circumstances that do not usually occur, I submit that it is no more than an embargo conducted in a most violent way, in a way the world never saw before, and I trust never will see again. But still it is an embargo, and it was not meant as a capture, but as an embargo. It was accompanied with circumstances that ought not to characterise an embargo. But it was not in the view of the party imposing it considered as a capture. For instance, the treatment of Captain Jenkins, if this country had so pleased, might have induced it to have adopted a particular line of conduct. But an embargo carried on with less or greater cruelty will not denominate it to be of a different description, and the consequences that follow from it are of that description.

scription. In consequence of this embargo, in whatever way it is to be denominated, the captain and crew were put out of the ship, and the ship was taken possession of by the Russian government; and the captain and crew, instead of being treated in the ordinary way, were marched 150 miles up the country. An ordinary embargo goes no further than to detain the ship, and every thing remains suspended in the state in which it is, till that is over. Now that is the common case of an embargo. But we know not only (if this may be called reprisals, and the Russian embargo a capture), in the case of the Swedish embargo in our ports, that their ships were detained, but that their persons were also actually seized. I submit there is no essential difference between the Russian embargo and that which took place in our ports, except the character of the two nations. As in the one case it was imposed and conducted with cruelty; so in the other it was conducted with the greatest humanity. There was none of that rigour and irregularity that took place in Russia, but still the effect was the same. It was an embargo in both cases. The one was an embargo as much as the other, and if the one was capture and recapture, so was the other. All the consequences of capture and recapture must be imputed to the embargo that took place in this country. And therefore, my lords, if it is to be viewed as a capture, I submit the facts do not appear to give it the legal denomination of capture. If the court think it is to be deemed a capture, there is an end of the argument. I submit it is an embargo of a new sort, accompanied with circumstances of rigour, but still it is of the nature and essence of an embargo. And unless the court can go the length of saying that an embargo puts an end to the contract, or so far suspends it, that during the embargo it is a nullity, this must be considered and deemed a continuance of the same service; and there is no more reason for holding that during an interval that begins at one day and ends at another, there is no reason for selecting these six months, and saying that during that period they are entitled to no part of their wages, because they are sailors. There is no reason why a portion should be taken out of their services, the most severe and distressing part of them, and that no recompence should be given them during that interval. If there is any rule of law, that an embargo suspends seamen's wages, whatever

whatever harshness that rule may contain, it must be submitted to; but I contend that no authority or case has been cited to shew that has been the effect of an embargo. Till this extraordinary case, when this transaction arose which one hardly knows how to denominate, nobody conceived this was the effect of an embargo. Though this was an embargo somewhat different from an ordinary embargo, the consequences must be considered to be the same. It is in no way to be distinguished from an ordinary embargo by any of the circumstances that occur in the case. It may be well considered as an ordinary occurrence which will protect the seamen to the end of the voyage with regard to their wages, for that is the only consequence. And there is no more reason in this case for cutting out this interval, and for saying that all benefit and advantage shall cease during it. I shall trouble the court no more as to the effect of the embargo.

I think the facts stated in the case incontestibly shew there was a voluntary continuance of the contract on both sides: and if the court think these parties themselves have put their own construction on it, if though the embargo may have put an end to it, yet if the court are of opinion that the parties have not put an end to it, and resort to the legal effect of that embargo, I say there is nothing to break that particular portion of time, and to say they shall receive no wages for a part of that time. If the court shall think this amounts to a capture, it puts an end to the case. But I submit it is much more like an embargo, and it is more correct to call it an embargo. With these observations, I trust upon the fullest....

Lord ALVANLEY interposing. Supposing this embargo, or whatever you please to call it, dissolved the contract or not, as they thought fit. It must be supposed there was a new contract. Does it follow when the sailors come home on a new contract, is it to be supposed that new contract necessarily implies that they were to be paid their wages during the time they were in prison in Russia? You seem to think that the terms of the contract being at an end, and afterwards revived, it is a necessary consequence, that it must be revived on these terms, namely, that the sailors shall receive their wages during all the time they were up in the country. The other side say No. They are only to receive wages *pro-rata*. Supposing the contract put an end to, and that there was a new contract entered

tered into to come home, why are we to suppose that that new contract is, that the old contract should be continued? Why should you suppose that?

Mr. Serjeant LENS. The option of the parties was simply to put an end to the contract or not, and they have not put an end to it. I submit the result is, that the old contract did subsist. But I will state to the court why it appears to me, if it is to be deemed so far a new contract, that it is a new contract in the sense that it has attached. Nothing of this sort has occurred. If this is for some purposes a new contract, yet no stipulations were entered into: if it be a new contract, the parties should have come to some new regulations; for it must occur to them if this is a new contract, and they have specified no terms, they must be supposed to have proceeded on the footing of the old contract. What has the captain done? He has certainly as to the Spaniard and the two Swedes thought they were in a condition to make a new contract. He says to them, You are not in a condition to go on with the old contract, and therefore I will enter into none at all. But with regard to the rest, the British and American part of the crew, he does not so consider them, still thinking if the law creates a new contract, yet as to all such things as were not found in that contract the parties should be regulated by the old contract. When a tenant comes in under an old lease, which is suffered to run out, in some respects there is a new contract, but as far as nothing is mentioned as I humbly submit, it goes on as part of the old contract. As far as the old applies, it is not done away; because they are living in the relation of landlord and tenant; if it is not altered, it still continues. It certainly to some purposes is a new contract, as to some parts of it; yet as to the main parts of the contract, if they are not done away, the parties are, whether wisely or ignorantly, under the old contract. The whole contract was to subsist as originally made as to those parts where there was no alteration. Then it will be deemed a continuance of the old contract as to the payment of so much per month, during the time they are out. The parties themselves from the whole of their conduct have shewn that they always considered it as a subsisting contract. They have deemed themselves to be acting under that old contract, and if there appears to be no rule of law to make it illegal
in

in the parties to consider that as a subsisting contract, it seems to follow as a matter of course, that it was according to the terms of the old contract these men meant to treat.

For these reasons, I trust your lordships will think the plaintiff is entitled to the judgment of the court.

Mr. Serjeant BAYLEY for the Defendant.

I am to trouble your lordships on the other side. My brother LENS began with putting the case on this ground; that the captain himself, from the distinction of his conduct toward the Spaniard and the two Swedes who were on board, and to the English sailors, has put his own construction on the case, and has thereby precluded himself from saying this contract did not subsist from the time this vessel, the Fishburn, sailed from England down to the time when she returned. Now I apprehend by adverting to the period when this conduct took place, it puts an end to that argument. The embargo was put on about the eighth or ninth of November, and the men remained on board till the twenty-ninth of the same month, and till the time they were sent up the country, during all which time they received their wages. But on the eleventh the Spaniard and the two Swedes went out of the ship, and then that which my brother LENS stated, I allow followed. Now at that time, on the eleventh of November, the captain was on board the ship. The men were also on board. It is true, at that time guards were placed along the shore to prevent the crew escaping from the ship, but the ship was not taken into the possession of the Russian government, the cargo was then remaining on board, and the men were not prisoners of war, because they were in the possession of the ship. And therefore it is quite impossible to argue from the conduct of the captain to the foreign seamen. At that time the captain considered the contract was subsisting. But must he also of necessity be considering it to subsist afterwards whatever other circumstances might occur? The argument would go to this extent, that the conduct of the captain at that time must of necessity have entitled the plaintiff to have received even if the Russian government on the twenty-ninth of November had made the ship Fishburn prize, and had condemned her as such. But can such an inference possibly be drawn from the conduct

conduct of the captain towards these foreign sailors who left the ship on the eleventh of November? I consider the conduct of the foreign seamen as having put an end to their contract. But at that moment I do not see that any thing had happened with regard to these English seamen to say their contract was dissolved. And therefore at that moment I see nothing which put an end to their contract. If circumstances afterwards do occur, which circumstances will enable me to say their contract is put an end to independently of any thing the captain did, then I say he is not precluded from insisting that there was an end of that contract: I am to contend, that nothing that took place previous to the eleventh of November put an end to that contract that had been entered into between the plaintiff and the defendant. But I say something happened on the twenty-ninth of November, by a Russian guard taking out of the ship that part of the crew that were British, and marching them 150 miles up the country, and taking possession of the ship. I say that, that put an end to that contract, or so far suspended it, from the twenty-ninth of November till they were returned to their ship on the twenty-eighth or the twenty-ninth of May, as to deprive them of all right to call upon the captain for their wages for that intermediate space of time. My lords, it appears on the facts of this case as I have just stated, that on the twenty-ninth of November the captain and all the English mariners were taken out of the ship, and marched up into the country as prisoners of war, and that they were to all intents and purposes prisoners of war. The ship was then taken possession of by the Russian government. What became of the cargo? Was it permitted to remain on board, or was it deposited in the hands of any agent? No:—all the cargo was also put under the care and direction of the Russian government. My lords, what conduct was this? When we are speaking either of a capture or of an embargo they may vary in their nature, and it does not at all follow because certain consequences do not result from one particular species of embargo, but that these consequences may result from another. In *Hately v. Clark* it was decided, that in the case of a common embargo, which leaves the captain in the possession of the ship; which does not destroy the relation of master and servant, of seamen and captain, and which leaves the vessel to all intents and purposes free, except as to sailing to one particular

ticular port, and completely under the control and government of the captain and mariners ; that case proves such an embargo does not destroy the contract into which the captain has entered with his men, and consequently would not destroy the right of the owners to freight, or of the mariners to wages. Why ? Because though the ship is not allowed to go to one particular port, the mariners, during the whole period of that time the embargo continues, are held to be in the service of the captain, and serving on board the vessel. The relation between the captain and the crew subsists during all that period of time. Such was the decision in the case of *Hately v. Clark*.

Let us see how this differs from the case now before the court. My brother LENS, in the course of his argument, admitted very candidly, as indeed he always does, and it was necessary to admit it, that if this is to be looked upon in the light of a capture, that all argument on his side ceases, and that the decision of the court must be in my favour. Let us see whether this is a capture or not. What are the certain consequences of capture ? They are these, that the ship is taken out of the possession of the captain and crew, that the goods are also taken ; and that they are taken out of that possession by an act apparently of hostility, and the captain and the crew are made prisoners of war. All these circumstances occurred in the present case. My lords, was not this in a great degree an act of hostility on the part of the Russian government ?

Was it not such an act of the Russian government, that if by resistance the captain and crew could have prevented the Russians from doing it, was it not the duty of the captain and sailors to have resisted, and by that resistance to have prevented the act from taking place ? Supposing this was an embargo, in the nature of a capture, supposing it was an act of hostility on the part of the Russian government, it was the duty of the captain and of the crew to the utmost of their power to resist. My lords, what is there in the case of a capture which does not occur in this case ? except one single circumstance, which I will state to your lordships ;—there is not a proceeding afterwards to condemn this ship as prize. But you know it is not at all necessary to make it a hostile capture, that it should be followed up by a condemnation :

it has been held in an action on a policy of insurance, where the loss is alleged to be by the capture of enemies, that it is not necessary to prove the ship has been condemned; the captors may choose to abandon; and I cannot distinguish this from the case of a common capture, where, in consequence of events afterwards taking place, the captors are afterwards induced to abandon their prize. Now, supposing this had been the case of capture and abandonment, could there be any question? Suppose the ship had been taken as prize, and had remained in the possession of the enemy for six months, and then that they had given up the ship, could there be a pretence for saying the mariners are entitled to wages?

Lord ALVANLEY interposing. I was just going to put that question; neutrals are in that situation every day, and are they not paid? I do not know whether I should not be glad to hear civilians on this case. You seem to take it for granted that in such a case the mariners would lose their wages.

Mr. Justice ROOK. They are paid by the captain.

Lord ALVANLEY. I should be glad to know whether they have lost their wages. How is that in foreign nations? You take it for granted they are not entitled to their wages from their own captain: I admit the cases to be exactly the same.

Mr. Serjeant BAILEY. There is the same distinction between that case and the case now before us, which I have already mentioned, namely, that the men were the whole time on board the ship performing service. My lords, there certainly may be cases where the captor releases, and where freight may be paid to the captain, and from that the mariners are paid. A capture may sometimes be occasioned either from misconduct on the part of the captain, or on the part of the mariners. Where an owner is exempted from paying the captain wages on account of his misconduct, the mariners themselves not concurring in that misconduct, there seems to be no reason why the captain who has been guilty of that misconduct should deprive the mariners of their wages: but if the captain is exempted from paying wages on account of the misconduct of the sailors, then I apprehend they would lose their wages during that period of time: and whatever would be the case of capture and recapture, the same would be the case in the present instance. The recapture puts the ship precisely in the same situation

tion as if the prize were abandoned by the captors. Now what would be the case of a recapture? The only authority which I can find is that of Curling and Long, 1 Pul. and Bos. 637, I wish to refer you to a dictum of Lord Chief Justice Eyre in that case, who very seldom gave any opinion without mature consideration. He says that by the marine law parties may recover *pro rata* if the voyage be interrupted, but afterwards completed. Such is the case where a ship after capture and recapture completes her voyage. Then, my lords, my Lord Chief Justice Eyre considers the capture as putting an end to the contract between the master and mariners. No contract in operation of law can be considered as subsisting between them during the time they are in the possession of the enemy, because the relation of master and mariner does not subsist between the master and the crew: for the mariners are not in any respect employed for the benefit of the captain. Why then it seems the new contract arises and can only arise between the captain and the seamen upon the recapture. And then, my lords, what must be the nature of that new contract? Why it could not be a contract on the part of the captain to pay the men wages during that period of time when they were in possession of the enemy, and when they were not employed at all for his benefit: but it must be considered as a contract to pay them afterwards, and certainly only during that time when they were in his service. My lords, apply that to this case, and you will see it puts

Lord ALVANLEY interposing. Do you mean brother Bayley to say, that in all cases when a ship is captured and recaptured that it puts an end to the contract? Suppose a ship is recaptured the very next day after she is taken, if that is so, then there would be an end of that voyage, of freight, wages, and every thing—if a ship happened to be in the hands of the enemy for five hours: that cannot be.

Mr. Serjeant BAYLEY. If my Lord Chief Justice Eyre's opinion is correct, if the contract between the captain and the mariners was to navigate the ship by the voyage, and if the mariners were to have a certain sum for the whole voyage, it would not put an end to the contract; but if it were the case of seamen hired at so much per month (which is the present case), there it would put

an end to the contract. And for this plain reason : What is the contract between the owners and the party who charters her ? It is a contract, that the owners shall be paid for employing her in the service of the person who charters her, and the mariners also are to be paid. Then, my lords, if they are to be paid at so much by the month, then the instant they are taken by an enemy the ship ceases to be employed in the service of the freighter, and the men also cease to be employed in the service of the voyage in which they are hired, and therefore it would put an end to the contract during the capture. But when a recapture took place, and when the ship again began to be employed in the service of the freighter, and the mariners began to be employed in the course of the voyage, then they were entitled to be paid as on a new contract.

Mr. Justice CHAMBRE interposing. If that is so, then every sailer would be enabled to make his own terms with the captain, and if he did not agree to them, then he might leave the ship.

Mr. Serjeant BAYLEY. It would come to this, whether the contract was suspended, or whether it was absolutely put an end to. My lords, my brother LENS says, if you should hold that the contract between the captain and mariners is to be suspended, great inconveniences will arise. He has not pointed out what those inconveniences would be : but I think the inconveniences would be all on the other side if your lordships were to hold that the contract subsists during the whole of that time ; if the hostile act were to continue for twenty years, and the ship were ultimately to get back to her destined port, the captain and owners of the vessel must be ruined, if they are under the necessity of paying the men during the whole time they were in captivity : my brother says it is reasonable the captain should pay them their wages during that time, because if they had not been in the service of the captain, if they had not been in the service of the ship, they never could have been in the situation of prisoners in Russia.

When a ship and cargo and all the hands on board are taken prize, and are carried into an enemy's country, they never could have been in that state, unless they had been on board the ship ; and was it ever contended that seamen in such a situation were entitled to be paid by the captain ? That case differs in no respect

spect from the case now before the court, in that point, and therefore that argument that they should have wages, must of necessity fall to the ground. My brother LENS mentioned to your lordships the case of Chandler and Greaves, where a seaman was disabled from performing his duty on board the ship in consequence of a blow from a piece of wood, which he received on board, and when he was discharging his duty. There is no doubt but that that man was entitled to receive his wages, because he received a hurt in the course of a voyage, in consequence of which he was disabled to perform the service; yet in the compassion of the law he is to be considered as serving on board during the whole of the voyage; but it is to be observed that he was paid no additional sum in consequence of the hurt.

Lord ALVANLEY. He was left behind at Philadelphia.

Mr. Serjeant BAYLEY. If the ship performs the voyage he is entitled to his wages as if he had been on board, and as if he had been serving on board during the whole period of time; because it is an accident happening in the course of the voyage, the captain has no right to turn him out of the ship; but he has no wages if the ship is ultimately lost; and if he is disabled for life, he is only entitled to be paid his wages for that voyage, supposing the ship ultimately arrives at her port of destination. He is entitled to receive wages on this principle, that the captain being in possession of the ship, and all the rest of the crew performing their service, navigating the ship, and proceeding in the voyage, there is no interruption to the voyage on account of the disability of this man, and therefore he was considered as performing, as continuing to perform, the service during the whole of the voyage. But mine is a case in which the ship is taken out of the possession of the captain and crew. In that case the ship during the whole time is going on to earn her freight. This ship the Fishburn was not going on to earn her freight, and it is on this ground also that the mariners are not entitled to be paid their wages. If this ship had been going on performing her voyage during the whole of that period of time, and earning her freight, the sailors would have been entitled to receive their wages. But by this act of power, which I call an hostile act, if it was not absolutely a capture,

ture, it was perfectly similar to it. In this case, during all that time the captain and mariners were in the situation of prisoners of war, the ship and cargo were in the possession of the Russian government. She was not in the employment of the persons who chartered her, and she was not, as in the case of Chandler and Greaves, day by day earning her freight; I see no inconvenience that can arise from holding that this voyage was suspended during the embargo. I say it is not of necessity that the captain is to pay them. It is not reasonable he should pay them. He pays them wages because they are employed in his service. Why then if by an act of power they are taken out of his service for a considerable period of time, if he did not and could not receive any benefit from them during the whole of that time, is it fair, is it just or reasonable that he should pay them wages? They are entitled to wages only during the time in which they were in his service.

My brother LENS compares it to the case of rent; I shall illustrate it this way: Suppose a man to let land, and it turned out after the tenant had been in possession for some time that a third person was entitled to have it for life, and that this third person merely took the attornment of the tenant. The tenant for life dies at the end of the year, the tenant then is in possession as upon his old contract, which the party who originally let him the land entered into: what rent is he to pay? For what period of time is he to pay his rent? He is only to pay that party during the time he occupies the land under that party, but not during the year he occupies the land under the tenant for life. And he can never be compelled to pay to him all the rent he had been paying to the tenant for life. Why? Because he has only the benefit of the landlord, of whom he originally held it from the death of the tenant for life. In this case the defendant, Captain Ward, has the benefit of these seamen when he comes back from the Russian ports to the ports of this country. Here he has the benefit of their services; but no benefit resulted from their services when they were up in the country in Russia, and why, therefore, should he be obliged to pay them? When he comes again to have the benefit of their services, it is only from Russia to this country, it is only for that period of time, and therefore it

is only for that period that the seamen ought to receive a compensation; and they have received it. My lords, I believe I have answered the different observations that have been made by my brother LENS. The sum of my argument is this: That this was an embargo, attended with the consequences of a capture. It was an act of the Russian government. It was an hostile act of power, which took the ship out of the possession of the captain and crew, and of course it suspended the voyage. The ship was not earning freight day by day during that time, she could not during that time be earning freight. If she was not day by day earning freight, and was in a state in which it was impossible she could be earning freight day by day, the mariners could not be entitled to wages, and therefore for that period of time I submit the plaintiff cannot be entitled to recover.

Lord ALVANLEY. Brother Bayley, you do not tell us very distinctly whether this act of the Russian government suspended the voyage, or totally extinguished it. Do you mean to say, that a seaman could have had an action brought against him if he had not come back with the ship? Were the sailors bound to stay twenty years if the embargo had so long continued, and were they liable to an action for not coming back?

Mr. Serjeant BAYLEY. My Lord, it is not necessary for me to say, whether the voyage was suspended or extinguished. I say during the time these sailors and the captain were up the country in Russia out of the employment of the ship, and while the ship was in the possession of the Russian government, the sailors were not entitled to wages.

Lord ALVANLEY. Then we must order a *venire de novo* to issue, because the jury who tried this cause had no idea of a new contract. No such thing was stated to them; and supposing there was a new contract, are we to presume that the rate of wages on the homeward-bound voyage was to be neither more nor less, though these six months were to be taken out of the calendar, as the eleven days were in the year 1752, when we began to calculate by the new style as it was called? I wish to know whether you mean to insist upon that, supposing there was a new contract, that the rate of wages from London out to Riga should

should be the measure of wages home from Riga to Plymouth ? That point was not at all before the jury. I do not think I shall go so far as to say that the sailors were liable to have an action brought against them, if they did not come back again in this ship merely at the wages they had on the outward-bound voyage.

Mr. Serjeant BAYLEY. It is not necessary for me to give an answer to that point ; because if it is suspended or extinguished I am not liable to pay the seamen their wages ; and they are agreed that the wages they have received, are all the wages which, for their subsequent services, they are entitled to receive.

Lord ALVANLEY. They did not so agree indeed. This is a question that has arisen since. You have paid them, but not in full of all demands. If they have not had their full wages, they are to have what is due to them on the *quantum meruit*. You say it was suspended ; the other side say it was at an end ; but the presumption was, that it was revived. If the court should be of opinion that this is a new contract, the jury must decide what that new contract was.

Mr. Serjeant BAYLEY. My brother Cockell should have gone to the jury for higher wages.

Mr. Justice CHAMBRE. The question is, for what period ?

Lord ALVANLEY. Unless you are of opinion the defendant has given his sailors an ample compensation, by having paid them these wages, it must be considered again by the jury. The jury may presume one thing, and we another. The question is, Whether they (the sailors) engaged to come back again for the same wages, as if this embargo had not taken place ? I cannot presume it.

Mr. Serjeant SHEPHERD. If the plaintiff had so shaped his case, it would then have been a question for the jury to have said, Whether they were entitled to more wages in coming home ? If they had been aware of it, I verily believe they would have come home for the same wages.

Lord ALVANLEY. You contended at the trial the contract subsisted, and that they were bound to come back again, taking the price of the outward-bound voyage, but that they were entitled to no wages during the time of the embargo. On the other hand, they contended the contract was never put an end

end to at all ; because, as they were not assenting to it, the contract continued on still. It was not insisted upon then, that a new contract had been made by the master and mariners, and the jury found a verdict for the plaintiff, subject to this question to be determined by the court. And all I mean to say is this : if the court should ultimately be of opinion, that it was to all intents and purposes a new contract ; or if it is only a question on the *quantum meruit* what ought to be given them during that time that certainly has not yet been determined.

R E P L Y.

Mr. Serjeant LENS. My lords, it seems to me the result of this case is to bring it to this question, Whether they (the sailors) have received all they were entitled to receive ? Rather than be put to the expence of a new trial, it would be better to adjust it ; as it can only amount to a few shillings per month, the difference cannot be great. They contend we have been paid out and out : we say, we are entitled to something more ; and we have taken the sum we have received, because no objection was taken to our having a further compensation, if we were entitled to any thing at all : and if we are entitled to any thing more, it will be very easy to adjust it : that way of considering the case has arisen from the new mode in which my friend has thought it right to put the case. The very manner in which he puts it is shut out by the statement : for my learned brother says this, that the 8th or 9th of November did not produce all that effect ; but that the 29th day of that month formed a new æra in the transaction. It does not distinctly appear on the face of the case, and therefore I shall put it generally in my mind ; the very admissions mean it is agreed every thing has been paid except during the time of the embargo.

Lord ALVANLEY. Is it to be calculated to the time you were sent up the country, or only to the 8th or 9th of November ?

Mr. Serjeant LENS. All wages have been paid to the plaintiff, except during the period of the said embargo.

Lord ALVANLEY. The case states, that " this plaintiff received all his wages for his voyage, according to the article, of

6l. 16s. 6d. per month, except during the time the ship was in possession of the Russian government, and the captain and crew sent up the country, and detained as prisoners."

Mr. Justice CHAMBRE. The ship was not in the possession of the Russian government till the crew were taken out.

Lord ALVANLEY. Tell us the fact.

Mr. Serjeant BAYLEY. The very admissions state the embargo to have commenced on the 1st of December, 1800, and therefore after the time when the crews had been marched up the country.

Mr. Serjeant LENS. We shall settle that out of court: the distinction that is made now is as to the period of time between the 8th of November, 1800, and the 29th of the same month; that is a matter that may be regulated afterwards; the main question certainly is, What is the effect of what appears to have been done by the Russian government, and whether it is to be denominated an embargo or capture? My friend has argued it to be a capture, and the effect of a capture. I shall submit to the Court, without endeavouring to make a distinction, that there is still less reason to consider it as a capture and recapture than an embargo, and that the difficulties are greater in the one case than in the other. My learned brother has spoke very generally of capture and recapture. There is something in this case to form a capture; but what part of this case furnishes the least ground for saying there was a recapture? The argument of considering any part of this case as a recapture has not been all considered. A recapture is not a giving back; the voluntary giving back, there having been certain secret circumstances which had induced that country not to consider us as enemies. But a recapture is an act of force on the part of this country, a superior act of power, compelling them to relinquish what they had taken by an act of hostility: both of these acts being acts of hostility. Looking at the transaction all through, whether does it most resemble a capture and recapture or an embargo? The Russian government that took this ship gave it back again. There was no superior force that resumed it, or could resume it; on the contrary, it was re-delivered: in all probability, if that embargo had been fol-

lowed by open hostility between this country and Russia, it would have ultimately been deemed a capture; yet the event shewed that it was not from the course the Russian government pursued, they professed not to deem this as a capture; but they professed to treat it as an embargo: they actually repaired the ship and re-delivered her into the hands of the captain and crew, doing all they could do to put that ship in the same situation she was in before she was taken into the possession of the Russian government. Now what is the denomination that ought to be given to this act? Is this the case of capture and recapture? Did one ever hear of the captor repairing the ship he had captured, and freely and voluntarily delivering her back? Where recapture takes place, it is in consequence of an act of superior force; there is no repairing of the loss and injury; but the party recapturing is glad to get back his property in any state in which he can find it. My learned brother's argument proceeds on the 29th of November; and he argues the case of capture and recapture, and cited some authority that this put an end to the contract: he says, I candidly admitted that was the effect of capture and recapture; but he carried the admission rather further than I made it. I did not admit that capture and recapture following immediately (which might or might not interrupt the voyage) necessarily put an end to the voyage and freight. I am not aware of a capture and a recapture of that sort; after a capture is made, the voyage may still be going on for a course of time, till a recapture takes place: how far that will put an end to the contract and determine the wages, has never been decided; there must be an interval and a period to signify his intention to abandon. It is not enough to say, there was a moment of time when a man's vessel was in the possession of the enemy, and therefore I will abandon; for before he can signify that intention there is a recapture, and there is no more than winds and waves to prevent the voyage from coming to an end: you must look to the end as well as to the beginning. And then what is the fair result of the whole? Is such a capture and recapture to put an end to the voyage or not? and that must depend on the circumstances that are to be found in the case. My learned brother calls this an act of hostility. In the event it was an act of

hostility. It departed from the appearance which it assumed at that time. It put on a different appearance. They made what reparation was in their power, and made it equal to a common embargo, requiring explanation and reparation. It was an act calling for reparation, and the Russian government actually did repair the ship. My lords, my learned brother says a new contract arises on recapture. Now there is nothing in this case that can be called recapture, and therefore there is nothing on which a new contract can arise, and nothing upon which such an argument can be grounded. And he says it will equally serve his purpose, whether it be considered as a suspension or an annihilation of the contract. We shall find a difficulty arising in this case; it is a case that is new; a new principle is to be laid down, and the court will not lay it down, without saying precisely whether they put the case on the one or the other, without saying whether there is any solid difference between the suspension and annihilation of it. This sort of suspension is to all intents and purposes a determination of the contract. It does not necessarily put an end to it; but it puts an end to it at the option of the contractors or either of them; and then there is neither suspension nor extinction. My brother supposes these parties were left at Riga under this embargo or capture, uncertain how long it might last. And they are in this condition, not knowing whether they might find any new engagement or not. If they were in that state, how are we to find out what was their sense of the contract subsisting at the time? What passed between the parties shews what their sense of it was. What would have been the consequence if the captain had fairly declared to these men that their contract was at an end when they returned to Riga? They would have taken their chance. If he had done that, the contract would have been gone instantly. But by the conduct of all the parties, by the conduct of the captain, as well as the men, they considered themselves always acting upon the original contract. That interval, therefore, during which they were up in the country, is no way distinguishable from the rest. Each party understood they were standing on their old bargain. And there was not a single day, from the beginning to the end of the embargo,

embargo, on which they might not have been called on, in pursuance and virtue of their contract, to perform that old engagement. The case of my learned friend is, that the mariners must remain on board the ship, and as they did not so remain, in this case it is much nearer the case of capture and recapture than an embargo; they must be on board the ship, performing their services on board. If this ship had been repairing, or if by winds and waves she had been prevented for six months from coming from the port of Riga to this country, it would not, I believe, have been necessary to have been on board. It is the general way of ascertaining that a seaman was discharging his duty. It is said he was on board, and from that circumstance it is taken for granted that he was performing his duty. In that sense they are presumed to be always on board. But in the sense in which he applies it, it is inconsistent with it. A mariner, who is hurt by accident in the course of the voyage, and who was left at Philadelphia while the ship was performing her homeward-bound voyage, was not on board in any sense of that word; and yet he was in the service of that ship, and paid for services which he never rendered, and which he was disabled from performing, in consequence of a hurt. The presence, therefore, of this man was not so absolutely necessary on board the ship, that his illness, which disabled him from being personally on board, deprived him of his wages. His illness exempted him, and dispensed with the necessity of his personal attendance during the remainder of his voyage. But the present case is different; because these sailors, fairly considered, were always in personal attendance; they were never from under the control of the captain. How far the captains might punish their respective crews, without application to the Russian officers, I do not know. They were all marched up together into the country, and they were marched back again under the immediate superintendence of their own captains. They were always kept together. All the crews of the ships were ready to resume their stations at a moment's warning, and in that condition they came back to England. I hope your lordships will be of opinion there is no solid distinction between the contract being suspended during the interval the parties were up in the country, with the liberty

to renew the contract or not as they pleased, and a dissolution of the contract. I hope you will think none of the parties were at liberty to do any thing inconsistent with the old contract. If the court were to act otherwise, they would be laying down a new principle which has never been acted on before, and I do not know any case where it is likely to be acted on. The case put by my learned brother, with regard to rent, is not analogous to the case now before the court. In that case there was a contract with a third party: here the contract is between the same parties. In that case it has been determined again and again, that the case of the lease of the remainder man is void. That case does not bear any analogy to the present case. It does seem to me, there is no necessity for introducing this new case, which would be attended with many difficulties. Undoubtedly the delay was of considerable duration. But contrary winds might produce a delay of six months. It might have happened to remain much longer in the shape of an embargo, and they might not have been able to extricate the ship. This, however, has lasted longer than in similar cases; but that is matter of state, and cannot affect the contract: the particular length of the embargo, I submit, cannot alter the law of the case. I submit likewise, when the whole nature of this transaction is maturely considered by your lordship, it will be found to come nearer to an embargo than to a capture and recapture. There is nothing of recapture appearing in the case, and it was not in the event an act of hostility, inasmuch as no act of hostility followed on the embargo. It was, it is true, an embargo somewhat different in its operation, and attended with very peculiar circumstances. But it does not essentially differ from the case of *Clark and Hately*; where, after the embargo is over, every thing goes on as if nothing had taken place. And, therefore, unless there is something in this case to distinguish it from all others, I submit the common principle ought to determine it.

Lord ALVANLEY. Supposing this must be considered to be an anomalous case, and that a new contract was entered into, what do you say are the terms of that new contract.

Mr. Serjeant LENS. My lord, in that way of considering it, as
the

the parties had made no arrangement about it, the old arrangement is the only one that applies. I therefore stand upon that, unless from the state and condition in which the seamen then were, nothing ought to be given. The jury must say how much the recompence ought to be. The whole sum for which the action is brought is 45l. 17s. 6d. They must determine whether that sum or any other should be given. I submit something must be given; that at all events for this interval one month must be paid for, though I contend we are entitled to receive wages for the whole of that period.

Lord ALVANLEY. You have been paid down to the time the crew were carried away.

Mr. Serjeant LENS. We shall set that to rights.

Lord ALVANLEY. That will be very material.

Mr. Serjeant LENS. I never heard this distinction before between the 8th and the 29th of November.

Lord ALVANLEY. They were kept on board the ship, in possession of the ship, until the 29th of November.

Mr. Serjeant LENS. The amount due to the plaintiff is 45l. 17s. 6d. supposing it should be found that he was entitled to receive his wages during the time of the embargo. There is only one circumstance more to which I beg leave to advert. If instead of these crews being marched up the country, they had been kept at Riga, on board their respective ships, how would the owners have been in a better condition? It might have been better for the men. And yet my learned brother's argument stands upon that. It would have made no difference to the owners if the sailors had remained on board at Riga.

Mr. Justice CHAMBRE. It does not seem to me there can be any possible necessity for going before another jury: what is it, the jury has to decide on, the *quantum meruit*, supposing there is a new contract? *Prima facie*, the only ground of presumption is this, the rate of the wages originally contracted for by the parties. There may be other grounds to repel that *prima facie* presumption. There is a case, the name of which is *Cutler and Powell*. That was a case where wages were sued for in a voyage from America. Now the rate of wages on that whole voyage, out and in, was a sum per month: but as they had occasion to pick up sailors in America, they paid them a very large sum,

sum. Similar circumstances might have taken place at Riga to raise greatly the rate of seamen's wages. But the plaintiff ought to have laid the foundation for that, by producing evidence at the trial. He has not done that.

Lord ALVANLEY. I differ from my brother in one respect. It was incumbent on the plaintiff to have produced such evidence, provided he had known on what grounds the difference was to be made. This was not intimated at the trial. It was not therefore necessary. He has been deceived in this. The fact is, it did not then occur.

Mr. Justice ROOKE. If in this case any new light could be thrown on it, or if any new statement could be made, I should be glad it were done; because there are so many cases behind. And although the plaintiff has not shewn grounds for increasing the rate of wages on the homeward-bound voyage, other plaintiffs might. I made an order as to four of these causes last Saturday, and one of my brothers has made an order in seven or eight more of them: It is of great consequence that every fact should be stated so as to enable counsel fairly to settle the case that comes before the court.

Lord ALVANLEY. Making these sailors believe they were to have all the wages, instead of telling them they might go where they pleased. You ought to have told them, instead of that you made them believe the contract continued,

Mr. Justice CHAMBRE. There is nothing that has passed in my hearing that proves that.

Lord ALVANLEY. Is it not a very hard case upon these men? They were never told their contract was at an end; but that it continued. They therefore were clearly deceived.

Mr. Justice HEATH. Who was to tell them that?

Lord ALVANLEY. If the contract was at an end, it was the duty of the captains to have told their crews so.

Mr. Justice HEATH. Neither of them knew the law.

Lord ALVANLEY. They ought to have entered into new articles.

Mr. Serjeant LENS. It is stated in the case, that the captain called on the two foreigners to enter into new articles.

Lord ALVANLEY. He did not tell his own crew that.

Mr.

Mr. Serjeant BAYLEY. That was before he went up the country.

Mr. Justice ROOKE. The court will be anxious in this case to avoid incurring useless expence in making up issues, and where the cases are exactly the same, to make them abide the event of this cause. But if the court should think there is any thing defective in this cause, and that further enquiry upon any point is necessary, they would probably be inclined that the parties should try another, in order that every necessary information might be had.

IN THE COMMON PLEAS.

*Easter Term, in the 42d Year of the
Reign of King George III.*

FISHER against WARD.

Monday, 31st May.

UPON hearing counsel on both sides, upon the matter of law arising upon the case stated between the parties, it is ordered, That the verdict found for the plaintiff, upon the trial of this cause, at the sittings after last Hilary term, holden at Westminster Hall, in and for the county of Middlesex, be set aside, and a new trial had between the said parties, the plaintiff undertaking to proceed on such new trial by Wednesday, the ninth day of June next.

By the Court,

GRIFFITH.

On the motion of Serjeant LENS
for the Plaintiff, Serjeant
BAYLEY for the Defendant.

SECOND TRIAL.

WESTMINSTER;

JUNE 14, 1802.

Sittings before Lord ALVANLEY and a Special Jury.

FISHER v. WARD.

MR. Serjeant COCKELL :

May it please your Lordship, Gentlemen of the jury :—

This action was brought by a seaman against the defendant, who was captain of a trading vessel, called the *Fishburn*, which went out from this country from the port of London to Riga, and unfortunately that voyage was undertaken when a dispute happened between the Russian government and this country. You are all too well acquainted with what happened upon that occasion, to make it necessary for me to state it at any length.

An embargo took place in the different ports of Russia; in consequence of which the ships of our country were detained there, and the crews were taken out of the ships and marched up the country, where they were kept as prisoners for a considerable time. Such also was the fate of the *Fishburn*; for after she arrived at Riga, the crew were taken from on board the ship, and marched up the country under a Russian guard, where they continued six months, and were afterwards brought back again, and ultimately brought home the ship, and perfected the voyage. The plaintiff was shipped on board the *Fishburn*, for that voyage, under articles; and on his return he expected to be paid at the rate he had contracted for. However, the owners, the captain, and

and the merchants, have thought fit to refuse these wages in toto. They say they are only liable to pay wages for the outward voyage, and for the voyage home; but that for the intermediate period during which these poor fellows were kept in a state of captivity, they are not obliged to pay. A common embargo will not prevent a seaman from receiving his wages; and why this embargo should have a different effect from all others, I cannot tell; nor have I yet heard that the wisdom of any man could suggest any fair, reasonable ground, for a difference in this case from the case of a common embargo.

Gentlemen, it seems to me there is no hardship whatever on the captain, in the payment of this money; for I could put fifty instances in which a voyage might be interrupted for a considerable course of time, during which the ship's crew must be maintained and paid their wages, in which the ship would be earning nothing, and yet wages would be given them. Suppose a ship, in the course of her voyage, should meet with any accident at sea, which made it necessary for her to go into port to refit; and suppose it should be extremely difficult to get the proper timber and other materials for repairing her; yet during the repairing of that ship the seamen's wages would be going on, and the captain, in that case, with equal reason, might say the ship was earning nothing during that time. And this is not the case of one individual, but of a whole body of men. It seems to me it would have been much more wise in the ship-owners and merchants to have paid the seamen these wages, than to have started this question. I really do not know what may not occur, if seamen are to be told, because an embargo has taken place, it is in the power of the captain to put an end to the solemn articles under which they sailed; to say that their articles are at an end, and that they are at liberty to do whatever they please. One cannot foresee the extent of the mischief that may arise to the trade and commerce of this country. Ships would become deserted, hands might not be got, and property might be endangered to an immense amount, on account of the want of those hands. I think it would have been a wiser and more wholesome act, and really for the benefit of the owners themselves, to have held out to the crews, that they were to keep to the ships agreeably to their articles;

articles: that, I think, would have been reading to them a most wholesome lesson; which would have been infinitely more advantageous to trade and commerce, and much more beneficial to those who have any interest in shipping. But, Gentlemen, really as it seems to me, we are quarrelling for nothing; because if it should be holden in point of law, which has not yet been held, that the effect of the embargo was to exonerate the captain from the payment of wages during that period, and that the seamen were loose from their engagement; this ship having fallen under the embargo at Riga, she afterwards completed her cargo, and was ready to return home, if she could get hands to navigate her: was it not in the power of the sailors to say on what terms they would engage on the homeward voyage? If they were not under the old articles, ought not the captain fairly and candidly to have told them, that the embargo put an end to the articles, and that they were at liberty to engage themselves as they pleased? Ought he not to have declared it to the men? Ought he not, when they came back to Riga, and were ready to do their duty as seamen, to have said, You are now come back again; but your wages have not been going on for the last six months, during the continuance of the embargo, because that event put an end to your articles; and I apprise you, if you think fit to come on board the ship again, you shall only have your wages back at the same rate as on the outward-bound voyage? If the captain had declared that to them, it would have been fair: what would have been left for the men to say? If you will not suffer us to receive wages from the time we set out, pursuant to the articles, we will not go home with you on the same terms; we shall take care you shall pay us in proportion: we shall not be then in the ordinary condition of men acting under their articles, and we shall not be in a worse condition, with regard to you, than we should have been if our original contract under the articles had been in force. No mention was made of any new contract; both the parties thought they were acting under the articles: what then is the case between these parties? What did the captain tell them? I believe the captain did not think, more than they, that the contract was at an end. The captain acted honestly, and believed the
articles

articles were subsisting. He believed the men were coming home under these articles during the whole of the voyage, and it has been only since the ship arrived in this country that this crotchet and conceit have got into their heads. It never entered into the head of the captain or of the mariners during the voyage. On the contrary, they were all of opinion they were under the control of the captain, during every moment they were up in the country, and that they were bound by the articles to return in the same ship. I firmly believe that was the opinion of all—I believe that they did come home under the articles. These articles, in the contemplation of the parties, subsisted, and they returned, both captain and crew, under the impression that their wages were going on from the time they left the port of London, till their arrival in the port of London again, or in any other port in this country. And if you find that, there is an end of the cause; and I do not think you will have much difficulty in the cause to find that; and whatever effect, in point of law, this extraordinary embargo might have on these articles, it was competent to these parties, they were at liberty, if they chose, to continue under them; they were at liberty to say, the original contract under the articles shall subsist: and if you find, from the evidence, that both captain and crew believed they were acting under the articles, the plaintiff will be entitled to your verdict. But if you shall be of opinion (though I trust you will not be of that opinion), but if, for some reason which I do not know, you shall think that the articles were put an end to, then you will have to determine whether these sailors were only to be paid on the homeward-bound voyage at the rate at which they were paid on the outward-bound voyage; whether they are only to be paid the rate of wages at which they were paid out from London to Riga. It would be the greatest injustice in the world, for these brave men, from the state-differences between the two countries, to suffer the duration of a long and horrible imprisonment in Russia, and then to come back at the same wages at which they went out, when, if they had been apprised of their situation by the captain, they might have received large wages; for other ships, at that time, wanted hands amazingly, and large wages were offered to get a crew. If, under these circumstances, the captain had not intended to carry them

them home under the articles, ought he not to have said, 'You are now at liberty, and if you choose to come home with me at the rate of wages you received under the articles, it is very well; you may then come on board; but you are to have nothing during all the time you were up in the country? The men would then have had their election either to have accepted of these terms, or to have insisted on better terms; for they might have received much higher terms on the voyage home. I shall prove to you that forty guineas, and more, were offered for the run of the voyage home: and if this man could have received this from another captain, tell me on what principle of justice he ought not to have the same sum from this captain, the defendant? If men, acting on the principles of justice, shall see that the plaintiff might have received forty guineas home from any other captain, but that he is only entitled to the rate of wages under the articles from the defendant; if men, acting under the principles of justice, can find that, then I cannot understand this cause at all. I shall prove to you, that one of this very crew, who came home in this ship, had forty guineas offered to him: what did this honest fellow say?—I have been five-and-twenty years at sea, and I never ran away from a ship, and no reward or temptation you can offer me shall induce me to do so now. We are under articles, and therefore I will not take your forty guineas.—There was one of this very crew that had this sum offered to him, but he refused it, conceiving he was bound by his articles. This poor honest fellow said, I have seen five-and-twenty years' service on board of ships; I have never in my life deserted any ship, and I will not do it now. Gentlemen, I will do more, I will prove to you that, during the time they were up the country, when one of the crew was complaining to the captain, he replied, I have the hardest of it; your wages are going on. If I prove this, it is the common case of an action brought by a sailor against his captain for wages, and in this case they must be calculated pursuant to the articles during the length of the voyage. If you shall think the voyage was put an end to, I say the contract was a continuing contract; but if you should happen to be of a different opinion, the only question will be, what this man deserves to have, and you will measure that by what he might have got from another:

another: you will decide whether he, by the conduct of the captain, has not been prevented from making the best bargain he could have made, and this is the nature of the case. I shall call the witnesses I have to prove this case, and I have no doubt that, in the end, he will be found to be entitled to all his wages under the articles; but if you should happen to be of opinion there was an end of the articles, then you will give him for the homeward-bound voyage, what you, in justice, shall think him entitled to at your hands. †

EVIDENCE FOR THE PLAINTIFF.

Lord ALVANLEY. Read the articles:—[*After they were read by the officer, Lord ALVANLEY said*].—They are the common articles. Now, what is the sum to be paid to this plaintiff, John Fisher, pursuant to these articles? What is the sum opposite to his name?

[The answer was, 6l. 16s. 6d. per month.]

Lord ALVANLEY. They are lunar months, I suppose.

Mr. Serjeant LENS. Yes, my lord; four weeks to the month.

Mr. Serjeant BAYLEY. My lord, I understand there is some difference here about that.

Lord ALVANLEY. I understand that on board king's ships the month is the lunar month, consisting of twenty-eight days; but that on board merchantmen the month is thirty days.

Mr. Serjeant BAYLEY. One of the sailors says there are twelve months in the year.

Mr. Serjeant COCKELL. Then it will be the calendar month.

Mr. Serjeant LENS. We shall take it to be the calendar month. We must trouble your lordship to read your notes of the evidence of John Watson, who was examined on the former trial, but who is now at sea:

Lord

Lord ALVANLEY. John Watfon said he was a mariner, on board the ship Fishburn, on a voyage from the port of London to Riga; they went out in ballast. When they came to Riga, they took in about two thirds of their homeward-bound cargo. The embargo took place about the 8th or 9th of November; and till the 28th or 29th of that month they remained on board, and then they were marched into the country. He says they were up in the country near six months, and returned to their ship about the 28th or 29th of May; they were under the captain's care. They had seventeen hands on board, with the captain; they had four Americans, two Swedes, and a Spaniard. The Spaniard and two Swedes did not go up into the country. All the British sailors did; the captain went with us, and had the command of us all the time we were there. They had so much a-day from the Russian government. It came through the hands of the captain; they came back as they went, only they were not guarded on the road back. When they came back the ship was surveyed, and if any thing was wanted, it was made good. The ship was caulked; they were paid twelve copics per day (which I understand is a very small sum, and hardly sufficient for their subsistence). He says, I received some money after I came to England, and which I ought to have received in the country. We entered into no fresh articles for the home voyage. The captain never told us we were at liberty to go. When the men were grumbling, he said, I have the hardest of it, your wages are going on.

On his cross-examination he said, when the embargo was first laid on, there was a guard of soldiers planted along the coast to prevent us from going along the shore: the day we were taken out the Russian guard came on board the ship. Our ship's company, he said, was marched up the country along with the crews of other ships. Every ship's company was under the command of their own captain.—(He was a little mistaken in that. It cannot be improper for me to state, what the case really was as it came out upon another trial. The truth and fact was, where the crew of a ship did not amount to ten men, they were classed together, and some were taken out of another ship's company and added to them.)—He said, if any of the men upon their march misconducted themselves, the Russian officers punished them.

That

That did not happen to his crew, but it happened to others; they were obliged to be at home by eight o'clock, captain and all. When they returned to Riga, the cargo had been taken out; they took it on board themselves again. There was a certain allowance made to the seamen by the Russian government while they were up in the country, it was so much per man for captains and all; the two Swedes and Spaniard were gone away before they came back. Before they went up into the country, the two Swedes and the Spaniard went to their consuls. They were about two or three days, and when they came on board, the captain said he would not take them on board again unless they would sign fresh articles; they thought they were going to suffer the same as the English, having been found on board an English ship. The captain said, they had forfeited their wages by going away, and they went away as soon as the embargo was laid upon the ships. The ship Fishburn at last came home and delivered her cargo at Plymouth, and they paid him for all the time I had been on board the ship.

That is his evidence.

ANTHONY WATTS, *examined by Mr. Serjeant LENS.*

Q. Watts, you were one of the crew of the Fishburn, that went out from the port of London to Riga, and came back again?

A. Yes, sir.

Q. How long is it since you returned? Were you here at the time of the former trial?

Mr. Serjeant SHEPHERD. Watts, have you subscribed any thing to the support of this action? Have you subscribed any money to the carrying on of this cause?

A. Not any, sir.

Mr. Serjeant LENS. You are just come from on board, I believe?

A. I was pressed on board the Urania frigate. It is about six weeks to-morrow since I got back.

Q. But you were on board the ship Fishburn, when she came to Riga?

A. I

A. I was.

Mr. Serjeant SHEPHERD. My lord, I only wish to understand the fact. Have you contributed any sum of money towards the carrying on of this action.

A. I have not.

Mr. Serjeant LENS. You remember the ship arriving at Riga, and the embargo being laid on?

A. I do.

Q. Did you go up the country?

A. I did, sir.

Q. Do you remember when you came back to Riga again?

A. Yes, sir.

Q. You returned in the ship to Plymouth?

A. I did.

Q. There were several other English ships at Riga, at the time?

A. There were a great many more.

Q. Many English captains there?

A. Yes, sir.

Q. That wanted crews to come home?

A. Yes, sir.

Q. Did you see or know any captain of that description?

A. There was a captain, who one day—

Mr. Serjeant LENS, interposing. What captain was he?

A. I do not know his name, he belonged to Liverpool; he applied to me to come home with him. He offered me thirty-five guineas.

Mr. Serjeant SHEPHERD. That is no evidence at all.

Lord ALVANLEY. Did you know that offer made to any body else? It is evidence most unquestionably, unless he is a better sailor than the other. I do not know how it can be proved in any other way.

Mr. Serjeant SHEPHERD. My lord, I submit when it is proved it is not evidence.

Lord ALVANLEY. How is it to be proved? if no one instance is evidence, any number of instances will not be evidence: how
are

are you to come to the price of seamen's wages at any particular time, but by ascertaining what was offered to any man at that time? In what manner, state to me, are you to prove a *quantum meruit* of what a mariner deserved to have, if you are not to go into instances of what was offered, and what was actually received? If one instance has no effect, how have five thousand any effect?

Mr. Serjeant SHEPHERD. If it cannot be proved I cannot help it.

Lord ALVANLEY. Then it is incapable of proof?

Mr. Serjeant SHEPHERD. If you will give me leave—

Mr. Serjeant LENS. I shall take it as it has been hinted, that it was a desertion: it would put an end to the cause.

Mr. Serjeant SHEPHERD. I understand the view with which it is given to the jury is as some criterion of a *quantum meruit* of the wages of a sailor. The captain of a ship having offered to any sailor of another ship thirty-five guineas to come in his ship, in a port where there are British ships, I say it is no evidence at all of a *quantum meruit* of a sailor's wages on a voyage home. I shall submit it is no evidence at all, because they are not entitled to go into a *quantum meruit* on a voyage home; for they have declared on a voyage from the port of London to Riga and back again as one voyage. It is affirmed the voyage out was put an end to; and, therefore, there was a new voyage, and a new contract, and every thing began anew from Riga to London. Then I submit on this declaration, they are not entitled to go into that, because there is no general count for a *quantum meruit*, but one on a voyage from London to Riga, and back again. First, then, I say, there is no evidence of *quantum meruit*.

Lord ALVANLEY, interposing. They will take all the advantages they possibly can find. I am astonished what the merchants are about. They will not let the question come on; I cannot conceive what they are aiming at. I cannot conceive what they mean; they will not let this question be tried, raising every difficulty, and throwing every obstruction in the way they possibly can. If your clients think fit to do so, undoubtedly they have a perfect right to make the objection. It is not evidence under this declaration: I do not know what they are about. They put

the sailors to all the hazard and expence they possibly can. For God's sake, let the question be brought before the court; they are doing themselves no credit at all by this conduct.

Mr. Serjeant SHEPHERD. I beg your lordship's pardon. My object is this, if possible, to have the actual and real question of law between these parties brought fairly before the court.

Lord ALVANLEY. You have the question of law when an action for thirty pounds is brought; and then you begin with all these sort of questions.

Mr. Serjeant SHEPHERD. My lord, I think I am quite justified.

Lord ALVANLEY. You are justified as a counsel. They will take every advantage. They say they want the question of law to be tried, and they take care that it shall not. It is easy to put in a count for a *quantum meruit*.

Mr. ESPINASSE. My lord, there is a count for a *quantum meruit*.

Lord ALVANLEY. They are saying all this time it would be extremely desirable to get the question settled; they are applying to government; and they will not let it be settled. Apply yourself to this objection; point out the count.

Mr. ESPINASSE. They must say the original contract is in existence, or not.

Lord ALVANLEY, interposing. Point me out the count in the declaration, to which you are to apply your evidence. What signifies talking about it? I would let you in if I could. I am astonished to find what they are about; government will understand in what manner these causes are brought forward. I will represent, I can tell you. I will state to government, most expressly, how these causes have been conducted. The question has not been permitted to be agitated. Every one objection has been started that possibly could. They have been applying to government to grant them a compensation, saying, they are anxious to have it tried.

Mr. Serjeant SHEPHERD. So far from wishing not to have it tried, it was tried on admissions.

Mr. Serjeant LENS. I do not find any count in the declaration that is general.

Mr. ESPINASSE. We say it is a voyage from London to Riga, and from Riga to London.

Lord ALVANLEY. Who is the owner ?

Mr. ATCHESON. Mr. Thomas Ward, who is a bankrupt.

Lord ALVANLEY. That is the only excuse I have heard.

Mr. Serjeant SHEPHERD. The action is brought against the captain.

Lord ALVANLEY. That is a very good excuse : I wish you had said so before.

Mr. ESPINASSE. The *quantum meruit* is from London to Riga, and from Riga to London. Now the articles are put out of the question by themselves. They must be taken as if they never had an existence. It must be totally at an end, or not at all. Then it comes to this question. If they put the articles out of the question, it comes to be a voyage without articles.

Lord ALVANLEY. They do not mean to say the articles never existed ; they say they existed to a certain time, but not afterwards. The question is, whether they may give evidence of a voyage from Riga to London, whether they can give evidence of a *quantum meruit* from Riga to London, without any regard to any former voyage. [His lordship here read part of the declaration, beginning with these words, " and whereas, afterwards, &c." and read down to these words, " undertook to pay what he deserved to have, &c."] Now the *quantum meruit* here is from London to Riga, but not from Riga to London.

Mr. ESPINASSE. The case applies as far as it goes. That must be taken to be under a *quantum meruit* what has been paid. .

Lord ALVANLEY. It is one voyage from London to Riga, and from Riga back. Did the defendant undertake to pay to the plaintiff what he reasonably deserved on that voyage ?

Mr. Serjeant SHEPHERD. My lord, I will tell you why I take such objections, and I apprehend this is a good one. When the facts of this case were submitted to the decision of the court, the question properly arising on a *quantum meruit*, formed no part of the case. When the facts had been settled, there was an agreement entered into between the parties, that certain other causes should abide the decision of this case. Now subsequent to that agreement, this new point on the *quantum meruit* has arisen. My reason

reason for taking this objection is, that as a new point has arisen since the parties agreed to abide by the decision of this case, that they may not be bound by any decision on that new point; and, therefore, if the other cases shall be tried by themselves, I drop my objection, otherwise we shall be bound down in other causes in a new point, which new point was not under the consideration of the parties, when they agreed to be so bound.

Mr. Serjeant LENS. We have no general count for work and labour; I am afraid there is no such count.

Lord ALVANLEY. You may bring another action. It is a pity but it could be amended.

Mr. Serjeant LENS. My lord, I submit, as they did not make this objection before, that they are now precluded in this part of the case from making it. They suffer it to come down in this form. They now object to the form of the declaration. I submit they ought to have stated it to the court in term.

Mr. Serjeant SHEPHERD. Not at all. I was not aware of it, nor were you.

Mr. Serjeant LENS. You will give us the benefit of the original case:

Lord ALVANLEY. You are going to prove the original articles remained. But what Mr. Espinasse said was, that there was a *quantum meruit* from London to Riga, and from Riga back again; and that the articles were out of the question. They (the sailors) have been paid for one part of the voyage; and they were not paid on a *quantum meruit*, but were paid under the articles. This is a new *quantum meruit* arising out of a new contract, out of a new hiring.

Mr. Serjeant LENS. This trial came on, in some sense, to come at this point; for when the court directed a new trial, it was to ascertain this very point: the question is, whether the declaration ought not to be framed to meet the evidence?

Lord ALVANLEY. If this is to go on, we shall never come to the general question. I would advise the jury to find a general verdict, if it is made out. I wanted the jury to find the facts, and then to say what was due in case he was entitled to receive wages for the whole voyage, and what would be due in case he was entitled to a *quantum meruit* back. If you prove the declara-

tion

tion, I shall advise the jury to find no special case, but to find a general verdict.

Mr. Serjeant SHEPHERD. I shall waive my objection, and take it as if the count had so stated it.

Lord ALVANLEY. That is fair. It may get into a special verdict, and then it must come on the record. You will try it on the first point, will you?

Mr. Serjeant LENS. They will allow us to add a general count.

Mr. GASELEE. If there is a special verdict, we shall allow them to amend this count. We must have a special case, or a special verdict. It is not for the jury to say whether an embargo, under all these circumstances, does or does not suspend these articles. We wish to have it put in this way; so as to have a special finding in some way or other. If the court shall be of opinion that this embargo put an end to the contract between these parties, then the question for the jury to ascertain is, whether the plaintiff has been paid enough on the *quantum meruit*; only we do not wish to be precluded from having the opinion of the court on the question of law.

Lord ALVANLEY. I wish you would now proceed with the witness.

Mr. Serjeant LENS, to the witness. Watts, how long was it before you failed, that this offer was made to you?

A. It was about a fortnight before the captain asked me what ship I belonged to, and I said to the Fishburn. He said, if I had a mind to go with him he would give me thirty-five guineas.

Q. Did you refuse to go?

A. I promised to meet him in the evening.

Lord ALVANLEY. Do you know of any sum that was paid to any sailor?

A. There were two of our lads who ran away from the ship, and they had thirty-five guineas for the run home.

Q. How do you know that?

A. I saw them one day, and was at a public-house with them.

Q. What are their names?

Lord ALVANLEY. I cannot take that as evidence.

Mr. Serjeant LENS. Do you recollect what the names of those persons

persons are? Is there any body here now to whom wages were paid on the voyage home by the run? Is there any body in court? You must not tell us what they told you. Did you at last make a bargain with the Liverpool captain, or did you come home in the Fishburn?

A. I came home in the Fishburn.

Q. The second time you saw the captain, did he offer you the same, or more?

A. He offered me more.

Q. Your own captain was not present at the time?

A. He was not present.

Q. You had no conversation with him about it?

A. No, sir.

Q. Had you any conversation with the captain about the articles?

Lord ALVANLEY. Did you tell the captain what offer you had?

A. I did not, but my captain had told me—

Mr. Serjeant LENS, interposing. When did the captain tell you what you are now going to say?

A. Before the conversation with the Liverpool captain, he told me, if I would own myself as one of his men, and go on board as before, and do my duty in the vessel, then my wages were going on.

Lord ALVANLEY. What is your captain's name?

A. Abraham Ward.

Q. What did the captain say to you?

A. He told me if I would remain in the ship, and do my duty as I had done before, that my wages were going on.

Q. What do you mean by going on?

A. All the while I was in the country, sir.

Q. Did he tell you so? Did you talk about going away?

A. No, sir. I was talking to him about my living. We had then been marched up the country, at the time this conversation passed in Russia: I wanted some money from him, for I heard that the merchants in London had subscribed money, and had sent it over to us, and we had not got it.

Lord ALVANLEY. Now tell us what passed between you and him there?

A. I asked him if he had a mind to give me some money, that had been subscribed for us and sent over to Russia.

Lord ALVANLEY. Now be sure you tell us what he said.

A. I asked him for the money which was sent out from England to us. He said if I had a mind to take it out in beef, or to go to market, he would pay for it, but he would not give us the money.

Lord ALVANLEY. He was right.

A. I told him I was sufficient to take care of my own money; if I was able to work for it, I was able to take care of it.

Mr. Serjeant LENS. Did you take any part of it?

A. I did not.

Lord ALVANLEY. I cannot understand him.

Mr. Serjeant LENS. Tell us what you said to the captain.

A. I told him I would not take the beef; he should give me the money.

Q. You would not take the beef; never mind that part of the story: my lord wants to know what passed about wages going on.

A. I was wrangling with him the next day. I met with him at the same house. He told me, If you have a mind to own me as your master, and go on board the ship when we do go down, which I expect will be before it is long—

Q. At that time you had some wrangling with him?

A. He said, If you will own me as your master, and go on board the ship and do your duty as before—

Lord ALVANLEY. And if you did your duty as before, what then?

A. My wages were going on, sir.

Mr. Serjeant LENS. Now are you sure that was the expression used?

A. It was.

Q. On that you forgot your quarrel?

A. I sold my two blankets.

Lord ALVANLEY. You rather chose to shame your person than your belly? How did you do without blankets in Russia in the winter?

A. I fold both my bed and my blankets.

Q. You were marched down the country as you were marched up?

A. No, we had not a guard of soldiers on our return.

Q. You had no more quarrel with the captain?

A. I had no more quarrel with my master.

Q. You came back to Riga?

A. Yes, my lord.

Mr. Serjeant LENS. How long were you at Riga before you came away?

A. I was about a fortnight or three weeks at Riga, before I went on board the ship.

Q. The same cargo was put on board the ship again?

A. It was. I was pressed before the Fishburn came to anchor. I was permitted to assist the people in mooring the ship before they took me out.

Q. You did not see any thing more of the ship, nor settled with them?

A. I have not settled at all. Mr. Bicknell gave me 11l. and told me—

Mr. Serjeant SHEPHERD, *interposing*. The money is deposited with the proctor.

Mr. Serjeant LENS. You arrived from on board a king's ship about six weeks ago?

A. I did.

Q. You know no more of what passed between the captain and the crew, after they came to England?

A. No, sir.

Q. Every thing damaged in Russia was repaired?

Lord ALVANLEY. Be so good as to ask him what passed.

Mr. Serjeant LENS. You never told the captain what offer had been made you?

A. No, sir, I did not.

Q. Did the captain ever ask you to sign fresh articles?

A. No, sir, he never did.

Q. But you signed articles before you left this country?

A. Yes, sir.

Q. You

Q. You never signed them again? You were never asked to do it?

A. No, sir.

Cross-examined by Mr. Serjeant SHEPHERD.

Q. The conversation about English allowance took place between you and the captain when you were up in the country?

A. It was.

Q. The captains were made answerable for the conduct of the sailors? When you were marched up the country, a certain number of you were put under every captain of a ship?

A. We were all under our own captains.

Q. How many men were there to a captain?

A. We had eighteen or twenty.

Q. Were not the English captains made responsible to the Russian government for the conduct of the sailors that were left with them?

Mr. Serjeant LENS. Your captain had the command of all your crew?

A. Yes, sir.

Q. Of nobody else?

A. None but the whole ship's company.

JOSEPH READ, examined by Mr. ESPINASSE.

Q. Read, were you a sailor?

A. I went to *Peterburg* on board an *American* ship.

Q. Were you one of those who were sent up the country?

A. No, sir. I came home in an English ship.

Q. Were you at Riga at the time the English sailors came down there from the country?

A. No, sir.

Q. Where were you?

A. At Cronstadt.

Q. Was there any scarcity of seamen at that time?

Mr. Serjeant BAYLEY interposing. I object to that. Nothing surely that happened at Cronstadt can be evidence of what happened at Riga.

Mr. ESPINASSE. What is the distance between Cronstadt and Riga?

A. I do not know.

Mr. Serjeant BAYLEY. There might be a great scarcity of seamen at the one of those places, and an overflow at the other.

Lord ALVANLEY. I think it is evidence what he had for coming back from Cronstadt.

Mr. ESPINASSE. Was there any scarcity of English sailors there?

A. Yes, sir.

Q. Do you know it?

A. Yes, sir.

Lord ALVANLEY. Riga is at a great distance from Cronstadt. Do you know what was given for English sailors from Cronstadt to London?

Mr. Serjeant SHEPHERD. Before you tell us that, how do you know it?

A. I had eight guineas per month.

Lord ALVANLEY. That was not more than you got.

Mr. Serjeant LENS. That to be sure cannot be evidence.

Lord ALVANLEY. You do not like it.

RALPH HARPUR was then called by Mr. ESPINASSE, but did not answer.

JOHN MACKINTOSH, examined by Mr. ESPINASSE.

Lord ALVANLEY. In another war I hope the legislature will take care to provide for all this.

Mr. ESPINASSE. What is your name, sir?

A. My name is John Mackintosh.

Q. Did you compose a part of the crews of those ships that were up the country?

A. Yes, sir, and belonged to the John and Isabella, of London, that was at Riga.

Q. You, your captain and crew, were sent up the country?

A. Yes.

Q. When

Q. When was the embargo laid on?

A. On the 8th or 9th of November, and they were sent up on the 1st of December. I was left on board the ship to take care of her, with the mate; we remained on board to take care of the ship.

Q. Now do you remember the crew returning?

A. Yes, sir.

Lord ALVANLEY. Did you stay on board all the time?

A. About the 17th or 18th of the month of December we likewise went up and joined the ship's crew there.

Q. Did you return with the rest of the crew to the ship again?

A. Yes, sir.

Q. Was there any scarcity of seamen at that time when you returned?

A. Yes, sir, a very great scarcity.

Lord ALVANLEY. I suppose almost all the ships' crews came back about the same time to Riga?

A. Yes, sir, much about the same time.

Mr. ESPINASSE. Now was there such a scarcity as caused any advance in the wages?

Mr. Serjeant SHEPHERD. Of your own knowledge?

A. I do not know it made any advance in the wages in our ship.

Lord ALVANLEY. Why?

Mr. ESPINASSE. Do you know what was offered to British sailors to navigate from Riga to London?

A. I do not.

Q. Was any thing offered to you?

A. No.

Q. Was any thing given by your captain to any man to come back?

A. There were two foreigners shipped who were not seamen.

Q. Do you know of your captain having offered any sum of money to any seamen to come back to the ship?

A. No, sir, I do not.

Lord ALVANLEY. How were you paid in coming back?

A. I had it on the same articles on which I sailed. Two foreigners came back, but I cannot say how much they had. They were not seamen.

Lord

Lord ALVANLEY. They were only to come on the home voyage. Do you not know whether they were to receive more than if they had failed the whole voyage?

A. These men on board of our ship would not. They were not failors, my lord.

Q. Were there no British failors taken in at Riga but those who were engaged for the whole voyage?

A. No, my lord, we had none on board but the ship's crew, who were for the whole voyage.

Q. Did your captain make any distinct bargain with you?

A. No, sir.

Q. You came back on your old articles?

A. Yes.

Q. And you know no failor that hired himself to come home on the home voyage?

A. No.

Cross-examined by Mr. Serjeant BAYLEY.

Q. All your own Englishmen came home with you?

A. All that were English that belonged to the ship came home with us. All except those who died in the country; and all the rest of the English crews came home with their own ships.

Lord ALVANLEY. Under the impresson they were obliged to do so, and this is the return they have got.

WILLIAM OULDS, examined by Mr. ALLEY.

Q. Did you assist in navigating any English ship to Russia? Were you at Riga at all?

A. No, sir, I was not; I was at Cronstadt.

JOHN SCOTTO, examined by Mr. ALLEY.

Q. Did you assist in navigating any of the English ships to Riga at the time of the embargo?

A. Yes, sir.

Q. What ship were you on board?

A. The Rodney.

Q. Were you one of those who were marched up the country?

A. Yes,

A. Yes, sir.

Q. Do you know whether mariners were in request to assist in navigating English ships back to London? Do you recollect whether seamen were scarce?

A. Of course they were; because the foreigners had left the ships.

Q. And therefore they were in want of hands?

A. Yes, sir. They got home to their own country.

Q. Now, sir, in consequence of that scarcity, do you know what were the wages or the offers made to seamen? Do you know any particular seaman to whom any particular offer was made?

A. I was offered thirty guineas.

Lord ALVANLEY. By what captain?

A. By captain Swales.

Q. Of what ship?

A. Of the Amity.

Q. Why did you not take it?

A. I went to the captain, and in consequence of some conversation——

Lord ALVANLEY. We must not hear the conversation that passed between you and your captain—but did you return home with your own captain afterwards?

A. Yes, sir.

Q. What that captain's opinion was cannot be given against this captain.—Your captain did not enter into any fresh articles?

A. No, sir; I never executed any, unless at the time I went out, and the captain told me I should——

Lord ALVANLEY *interposing*. The jury may guess what passed, and what the captain told you.

A. I came home under the old articles.

Q. What were you hired at?

A. At 5*l.* per month.

Q. And how long were you in coming back?

A. I was some time at Riga.

Q. How many weeks were you in coming back?

A. Three weeks or a month, perhaps: I cannot exactly say.

Q. You were hired on the original voyage at 5*l.* a month?

A. Yes,

A. Yes, fir.

Q. You say this man offered you thirty guineas? Suppose you had been hired on that home voyage at 5*l.* a month, how long was it before you got to London?

A. About seven weeks.

Mr. ALLEY. And therefore under your regular hiring, it would not amount to 10*l.*

Mr. Serjeant BAYLEY. This voyage ended on the 28th of August, and we know the embargo ended on the 28th of May.

Lord ALVANLEY. How much did you pay them?

Mr. Serjeant BAYLEY. Three months, from the 28th of May to the 28th of August.

Lord ALVANLEY. You have told us a conversation passed between you and your captain, and in the course of that conversation he told you what induced you to come back. You cannot prove what passed between you and your captain.

Mr. ALLEY. Do you know any other seaman here, who was at Riga?

A. Yes, fir.

JOHN FORD, examined by *Mr. Serjeant LENS.*

Q. John Ford, were you at Riga?

A. Yes, fir.

Q. What ship were you on board?

A. The William and Mary, of Shields. I was at Riga, and sent up the country.

Q. Do you remember coming back to your English ship at Riga, and coming in her on the home voyage to England?

A. Yes, fir.

Q. Do you know what was the rate of seamen's wages who were then at liberty?

A. During the time I was a prisoner up the country, there was a report in circulation——

Mr. Serjeant BAYLEY. You must not tell us that.

Lord ALVANLEY. They may shew a subscription was made for them during the time they were in confinement, by the merchants

chants of England, and that it was remitted to them; but that the money was never received.

A. The money was never received by us.

Lord ALVANLEY. Do not be angry about it.

Mr. Serjeant LENS. Now, when you came back to Riga, do you know what was offered or given to any body?

A. Yes, sir: there was a foreigner belonging to our ship, and at the time we were up the country he had applied to his consul, and had got his liberty; in consequence of which he was not marched up the country with us.

Q. When you came back, you found him on the spot?

A. I found him in a Prussian ship.

Q. When you returned to Riga, he had gone from your ship to a Prussian ship?

A. When I returned I found him belonging to a Prussian ship at Memel. I then was in search of hands for our own vessel. I was authorised so to do by the captain. In consequence of my meeting with him there, I immediately took him before the captain, and he promised to rejoin the vessel, provided he could, and take the voyage home, on the captain undertaking that his wages should still continue.

Lord ALVANLEY. Did you hear that?

A. I did.—If he would come on board his wages should commence from the time he first signed the articles.

Mr. Serjeant LENS. Had he been paid for all the foregone time?

A. I do not know.

Q. Did he come back?

A. No, sir.

Lord ALVANLEY. I suppose he could make better terms. What did he say? Did he mean to include all the time you were up in the country?

A. I understood it as such.

Q. Did he accept the offer?

Q. He did. He made an offer to desert the ship he then belonged to, and to rejoin his former vessel, and to return home in that vessel.

Lord ALVANLEY. On these terms?

A. On

A. On these terms.

Q. Well, did he keep to his bargain?

A. On account of the Prussian captain having suspicions of him, he kept him under confinement, so that we were obliged to come without him.

Mr. Serjeant LENS. You had authority from your captain to go about and get hands. Did you offer them any wages?

A. I was not to inform them what wages would be given. That was to remain with the captain. If they consented to come home, I was to bring them to the captain.

Lord ALVANLEY. Did you find nobody there who was not engaged?

A. There was one man who pretended to be disengaged.

Mr. Serjeant LENS. Did you hear the captain make any offer to anybody else?

A. There were three Lubeckers.

Q. What bargain did he make with them?

A. They could not agree.

Q. What did the captain offer?

A. 6l. per month, which he gave to the foreigners who came home—he offered them 6l. per month.

Lord ALVANLEY. They were not under any prior articles?

A. They were not paid any thing like what the other foreigners were.

Q. Why did they not desire as much as they? What sort of men are these Lubeckers? Would you give as much to them as to any other? What ship were they on board of? You wanted them to come home with you?

A. Yes, my lord.

Mr. Serjeant LENS. If they had once left the ship they would have forfeited their wages? There was an end of the wages?

A. The old articles were still in power as they were at first.

Lord ALVANLEY. That is your idea of the matter, my friend; there were no fresh articles?

A. He had been one of the crew freed by the consul.

Mr. Serjeant LENS. No bargain was actually made with the Lubeckers?

A. No,

A. No, sir.

Q. Are they good sailors?

A. That depends on trial; I would give them as much as other foreigners if they deserved it.

Q. In a foreign port, would you give more to an English sailor, or to a foreigner?—but without knowing any thing of them, would you ship an English sailor preferably to a foreigner, taking the chance of what he might turn out?

A. No, sir; I would give them the same wages.

Mr. Serjeant LENS. I thought it had been the other way.

Lord ALVANLEY. If they were equal in merit?

Mr. Serjeant LENS. But supposing the one of them to be an Englishman, and the other a foreigner, the generality of the English sailors get more wages without any thing being said. Whether would you give more to an English sailor, or to a foreigner?

A. I would give more to an English sailor than to a foreigner.

Lord ALVANLEY. Have you no other evidence of what passed between the crew of this ship and the captain?—There must be a vast number of these causes.

Mr. Serjeant COCKELL. My lord, there was a difficulty in getting these witnesses.

Lord ALVANLEY. They would be very willing witnesses of course, because in truth and in fact, they are all speaking for themselves.

Mr. Serjeant COCKELL. They are all dispersed over the world: we have used all our industry about it.

Mr. Serjeant SHEPHERD for the defendant——

May it please your Lordship,

Gentlemen of the Jury, from the evidence we have heard to-day, the question is much changed from the shape in which it once appeared here, not only before a jury, but before the court out of which this record comes, namely—the court of Common Pleas. Gentlemen, there is certainly a very serious question of law to be tried between these parties; and the great object of the defendant and of many other ship-owners has been, to have the question of law reduced to a shape in which

it may fairly be submitted to the decision of a court of law. I believe both of these parties acted together, neither of them knowing what the law was. I believe so myself, because I profess to you, at this moment, I do not know what in the result will be the opinion of the Court on this point: and I say it with the more confidence, because after having naturally enough considered this case a great deal; because after having heard it argued, and very ably too, by my learned Brothers, as applied to the case between these parties and between others, as yet, on the abstract question of law, the Court themselves have given no opinion. When I say that, do not suppose that I will take the liberty to say the Court have not formed an opinion; but I only mean, that circumstance convinces me, that the law on this new and extraordinary case, arising on the proceedings of the Russian Government, with regard to the property and the sailors of this country, is by no means clear, and that both the parties in Russia were acting in complete ignorance of what the law was. If this question shall be decided against the merchants and owners, then there will be an end of all that head: because if the abstract question is decided in favor of the sailors, this man will be entitled to recover his whole wages from the moment he sailed from the port of London till they arrived at Riga, during all the time they were detained in the country under the embargo, and till the moment the voyage was completed. During all that time, the contract was running on between these parties, the same as in a case of a common embargo that takes place in this country, and sometimes in other countries, the sailors are intitled to receive their whole wages. The first question then to be tried between these parties, or at least, one of the questions is, Whether the proceedings in Russia so totally put an end to, or, in point of law, suspended the voyage so as to cut out, as it were from it, that period of time during which they were in Russia under that confinement during the embargo? But the case now assumes a new shape, because it is stated, on the part of the plaintiff, that supposing the Russian embargo to put an end to these articles, so as to set the parties at liberty,

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then the question for you to decide is, How much this man deserves to have, assuming that he entered into a new contract, and that he began a new voyage from Riga to London, after the embargo was put an end to? Now, my Brother has addressed you, and said it is hard, a loss should fall on them in consequence of the situation of the two countries of Great Britain and Russia;—all national calamities beyond all doubt are hard on the individuals. On the other side also, on the part of the owners, it is hard that this national calamity which took place between Great Britain and Russia, should fall entirely on the owners; and I contend that the calamity, which must ultimately fall on the owners, must be divided between them and those on the other side. It would be the greatest injustice that all the calamity should be borne by one side; the others also must bear a part of the burthen, each of them must bear a part. Gentlemen, you know that by the marine law, freight is the mother of wages; for instance, if a vessel sailed from port, and that vessel be lost before she arrives at the port of destination, or if she is captured before she arrives at her port of destination, so that the owners do not receive any freight, by the law, not only of this country, but of all the countries in Europe, the sailor loses his wages, because the owner loses his freight. In this case the owners of this ship let their ship to freight, not for a fixed period of time, not by the month, but for a lumping freight, from Great Britain to Riga, and from Riga back again to Great Britain; when they arrive at Riga, the then Emperor enters into an act of hostility against this country, for he immediately took possession of all the British ships in Russia—he puts a guard on the shore—after that had taken place a certain time, he took out the sailors and captains and marched them up the country, where they remained in confinement for six months; he also took out the cargo. Now I say, if this act of hostility had been followed up by a subsequent war, which, thank God! it was not, there is not the smallest doubt these ships would have been captured and condemned, the sailors would have been made prisoners, and might have remained a much longer period

period in captivity, than they did, they would not have received their wages, not even up to Riga. They would have been deprived of all the wages they earned out, and of course of their wages during all the time they were imprisoned in Russia. It happened, providentially, that things took a different course, and after a certain given time had elapsed, Russia felt to a certain degree, the injustice of what had been done; and wishing to be restored to a state of amity with this country, resolved to send them back to their ships.—They restored them as far as they could. I believe they endeavoured to put them in *statu quo*:—they caulked and repaired the ships, but the owners during all that time were losing their freight. Where the freight is at so much per ton, if a ship is detained five or six months, you know, during all that time the owner is earning no freight. Had it not been for that, the voyage would have been ended in two or three months, and the whole freight, which was ultimately earned in this case, would have been earned in that short period, and she would have been earning more freight during the time she was kept in Russia; so that in fact, the owners, during six months, lost the benefit of all freight; and we losing the benefit of that freight which would have been earned by the ship, I say, the sailors during that time lose the benefit to any wages that might be earned by that ship. This plaintiff, and all the other sailors, up to the time of their arrival at Riga have been paid their wages; so also for the home voyage from Riga to London; they have received all that is due to them; they have been paid all their wages. When the question was originally started between these parties, the plaintiff made his case, and brought his action, not upon any idea that he was intitled to more money in coming back from Riga to London than he had received for the outward voyage, but he made his claim for the intermediate time, namely—from the time they were taken out of the ships till the time they were restored to them again, during the time they were detained prisoners in Russia; and that raises the question of law, Whether this embargo which is a question of law, and of pure law, beyond all doubt, whether

whether this species of embargo is such a species of embargo—is such an embargo, or act of hostility, or capture, or call it by what name you please, as to annul or suspend that contract during the time it remained? I do not know whether I make myself understood. But that is the question the parties came originally to try. Very often this country lays on an embargo, and says, you shall not sail to such a port: this is a wise precaution, when it is supposed, that the country to which you are going, may be in a state of hostility with you, or for any other reason. This is the case of a common embargo; and as to that, I believe it is agreed on all heads, that it does not put an end to the voyage. It is like the protraction of the voyage by winds or weather, or from any other cause; in all these cases, the relation of servants on the side of the sailors, and of control and order, and benefit of service on the other, on the side of the master, so that *quo ad*, themselves, they stand in the same situation, except as to proceeding on their voyage; and during this time, the owner has the benefit of the sailors services in protecting the cargo, and in taking care of the ship, by doing all that was necessary to be done on board the ship: Whether she were in port or sailing upon the high seas, it follows, as a fair legal consequence, that the sailors should be receiving their wages, because the owners and captains are receiving the benefit of their services. They cannot navigate the ship on the high seas because the embargo took place. When this embargo was laid down, the ships were taken possession of by the Russian Government, and the crews marched up the country, where they were treated as prisoners of war; were kept on a small allowance, such as would be made to prisoners of war, with an additional allowance from the English merchants in this country, raised by subscription, and remitted to Russia to be given to them, in addition to their allowance by the Russian Government. One or two circumstances have been introduced into this cause by the Black, which have really nothing to do with it, but to excite groundless prejudice. The Black told you, when he applied to the captain for money, he refused to give him any, but told him

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he might take it out in beef, and that he would pay for it. Gentlemen, the captain had a very good reason for that.—When they were marched up the country, the Russian Government when they found they had to deal with a great number of English sailors, and knowing that *Jack* is generally a stout-hearted, bold fellow, and sometimes not so regular on shore as when he is upon the high seas, they made every captain responsible for the conduct of the sailors who were marched up into the country with him: and therefore knowing that country—knowing there was not always that nice delicacy and discrimination of guilt and innocence, which, thank God! prevails in this country; and having no wish that the *knout* might be inflicted on him, the captain said to him, “I will give you beef, but I will not give you money, because that money might be applied to the purpose of getting liquor, which might induce you not to conduct yourself quite so prudently, and we may get into trouble;—you shall have beef, but you shall not, for that reason, have the money, which may be misapplied in liquor, or in some other way.” But really, Gentlemen, as I said before, this has nothing at all to do with the cause, because neither the captain, nor any other, endeavoured to withdraw any part of what justly belonged to these sailors—indeed that is not pretended. Then, see how this case stands? When these sailors were up the country, the captain, it is said, did not tell them the contract was dissolved or suspended; and did not tell them to go, for that they were at liberty to go where they please, and to act as they pleased—No, he did not inform them the contract was at an end; and if the captain had been asked the question, he would have said, I cannot tell you; it is a question of law which must be decided, and decided by some English court of justice: that is the answer which would have been given. It was a question of a new and singular nature. The proceedings that took place in Russia, are such, I believe, as never happened before, in point of singularity; and such as I hope and trust, will never happen again. How therefore they were to decide on it, I really cannot conceive; how they could decide it, when it
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has not yet been decided by this court, after all the reasoning and argument had upon it, I cannot tell. It is difficult to say how they could have decided it, without taking the thing into consideration; and therefore I apprehend, the law must decide it. The law must decide it after the whole transaction is over. If it shall turn out, in point of law, that the embargo is not to be considered as having put an end to the contract, but that it left the articles entire, then the plaintiff will be entitled to all his demand, namely, to wages for six months at 6l. 16s. 6d. per month, which he says he is entitled to.

Then it is said, supposing that it is not so; suppose the embargo put an end to the contract, what is this man entitled to receive? There is a new voyage, what does he deserve to have for that voyage home? Now, gentlemen, on that subject, as far as relates to the mere remuneration for work and labour, measuring it by this in my humble judgment, the true measure is that which has been stated, 20l. 9s. 6d. which is the sum he has received: but it is said no. That is the sum which he agreed for when he sailed from Great Britain, namely, at the rate of 6l. 16s. 6d. per month. But the articles under which he received that sum were put an end to at Riga, they might have got a great deal more. Now has that been proved?—Why, it is a most singular thing that during all the time they were at Riga, when so many ships were there, they have not been able to produce one single instance of any one man, Briton or Foreigner, who had come home in any ship, and who had received more than the regular rate of wages which he set out with from Great Britain not one, not a single instance. They have produced one or two instances of offers made to sailors; one man had been offered thirty guineas, and another sum had been offered to another sailor, if he would leave the service in which he was, and come to that particular ship. That occurred to one or two sailors, when a captain happened to want a hand or two. But does that prove that the rate of wages from Riga home, was thirty guineas by the run, when nobody has received it? You will be so good as to recollect another thing; instead of there being

a scarcity of failors, if all had been set loose, there would have been plenty of them; because if all these failors had each of them been taken from their ships, there would have been so many British failors that no man would have got thirty guineas; because there would have been all the British failors of the different ships, and then the plenty that would have arisen from the discharge of so many, would, instead of raising, have reduced the price of wages, in the run home, because each would have wished to have had a ship, and the greater the plenty there was in the market the less would be paid for it; they have not been able to produce to you any one man, either Foreigner or Briton, that has received that rate of wages. They only shew one or two offers made to men to desert their ships. Now does that prove any thing like a rate of wages superior to that rate of wages which the plaintiff received under the articles, namely, 6 guineas and an half per month? My friend says it is hard the plaintiff and the other failors should not receive the whole of their wages; I may say, but it is hard the owners should pay more to the plaintiff in consequence of what you must allow has arisen from this embargo. It does not in the smallest degree appear, that the rate of wages home was higher than on the outward voyage. If they could have proved that many of the British failors who were at liberty, had come home from Riga to London, and had received thirty or forty guineas for the run, that might have been something, but they have proved no such thing; and I will venture to say, that if all the British failors had been discharged from their ships, the captain might have said, I will not carry you home at all, which I admit would have been extremely improper; but then, they would have been glad to come at any rate of wages, and for less wages than they did receive when they did come home. Gentlemen, another observation give me leave to make, is this—a mate of a ship would be much more likely to stick to the ship, than to throw himself loose as a foremast man; and for this reason, the mate of a ship when he comes into this country, is never pressed, now a common failor is pressed, and that is
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of great consequence when a mate is to come home. Therefore you observe here, there does not seem to be a tittle of evidence to go to you to prove another criterion by which this plaintiff ought to have wages more than those he agreed to receive when he went out of the port of London to Riga, and it is clear, the plaintiff never had such a conception himself, but he and the other sailors, when they received their wages, they received so much for the voyage out to Riga, and they received so much on their voyage home, leaving the intermediate time to stand on its own footing: whether it was to be considered as a detention occasioned by the winds or the weather, and whether he was to receive any thing aye or no. There were two instances of an offer of thirty guineas if they would leave the ship—the one the case of a British sailor, and the other that of a foreigner; and there was the instance of three Lubeckers, and on the subject of the Lubeckers, they were offered 6l. per month; they refused it: but if there had been that extraordinary scarcity, and 30l. per run had been any thing like the rate of wages, do you not think the captain would have made them a very different offer? as they were to come to Great Britain they must have found their way back again to Lubec. It is a very different thing, a sailor coming back to his own country, and a sailor coming to a foreign country, from which country he must find his way back again to his own country, or must find some new employment. What does that prove—three Lubeckers did not like to come to Great Britain and there to be dropped by the ship. What then? Have they proved any one instance in which they engaged and performed the voyage, in which they refused or in which they paid more—not one.

Now, Gentlemen, on the other side, I shall prove some instances of British sailors who were engaged at Riga, to come home, and who did come home at the same rate, and some of them at a less rate of wages than that which this plaintiff received. The plaintiff received 6 guineas and a half per month. Now I shall prove one instance of a mate; of a man, who had gone out to Russia as an apprentice, and who having served his

time out there, applied to the captain, and asked him if he would let him go to another service if he could find it; he went and engaged himself as a mate from Riga to this country, at the rate of 6l. 10s. per month. I shall prove several instances of sailors who had engaged themselves at 5l. per month, and this proves to you that if this ship had wanted hands, that she might have had Russians and other foreigners at a much less rate of wages, but very few wanted men, because all the crews returned with their own ships. But the consuls of the different countries of Sweden, Denmark, and America, when their countrymen were seized on board the British ships, procured their liberty, and they were permitted to go where they pleased, and to do with themselves as they pleased. Then the captains of those ships on board of which they had served, wanted somebody to come in lieu of them. They hired other men, and instead of giving them any thing like what has been stated for the run, all those sailors came home at much less wages than those for which this plaintiff performed the outward voyage. They all came home, leaving the question during the embargo where it ought to stand—on the point of law. If I prove these facts to you, what becomes of the rate of wages on a *quantum meruit*? It is not enough for the plaintiff to say, I have a right to my wages during the time of the embargo, or if I have not, then I am entitled to more wages for coming home. But supposing the contract was at an end by the embargo, the question will be, Whether such an admitted and current higher rate of wages took place, as entitled him to receive wages at that rate? It is said, the captain did not tell them they were discharged from their contract. The sailors did not say they believed they were discharged from the contract; if that had been declared, the captains would have had to consider, whether they would have given the men so much by the run, or whether, instead of having this put upon them, whether they would not have applied to foreigners; always recollecting this—that if the British sailors had been discharged, I suppose there were not fewer at that time at Riga, than 800 or 900 sailors, who must all have made new bargains, or have staid in Russia, if they had a taste for it: And that very circumstance would have introduced into
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the contract, lower terms; and if they had not agreed to those terms, the captains would not have given any more. I do not blame either the captains or the sailors for not mentioning this, because neither of them knew, nor could know what the law is on the subject. At this moment it is not ascertained by a solemn legal decision; and this very case is brought before you, to take the opinion of the judges of the land what the law is. And therefore, it is no where ascertained what the law is; neither of the parties know what that law is, but they go on acting without knowing the law, and afterwards that law is to be decided. There can be no deception in a man not stating that which he does not know, leaving that question to be decided by the law of the country when they returned to this country: and therefore here is no deception at all on the subject.

Here is another thing to be observed, for the very purpose of deciding the question of law, the plaintiff is to endeavor to make out the particular facts so as to take this case out of the general law; and considering the character of the witnesses who come to prove it, they are very much interested; for every one of these witnesses has the same claim on their owners that this plaintiff has; from some conversation with the captain, saying the wages should go on when they were up in the country, they are to say this is to alter the general principles of law, and to take this case out of it. In the first place, I do not recollect they have proved it; *quo ad*, this captain: WATTS said the captain told him, the wages should go on. He never told his own captain he had been offered thirty guineas; but in conversation up the country, when talking about the beef instead of the money, the captain said, if you will do as you did before, your wages are going on. What then, if the captain said that in ignorance of the law of the country? if that be not the law, the wages were not going on. That contract will not bind the captain or the owners through the medium of the captain. That will not make them liable to a burden to which the law of this country would not make them liable. But this conversation comes from the mouth of a man, who is not too much interested to be a competent wit-

ness, but is deeply interested in all the facts he relates; and therefore, as it seems to me, it would be a great deal too much on a sailor's coming and saying he had a conversation to that effect with the captain, if that were to decide the question of law against the captain, or to take it out of the general law: and it would be extremely dangerous if you were to give credit to the extent of that conversation, if you were to say that it amounted to a new contract, or that such a conversation either did or could amount to any thing in the shape of a new contract, or that it is a special sort of contract, in consequence of which, he undertook to pay these wages if they came on board. If it were so, I would object to the form of the action, and therefore the two questions are these: first, that which comes as a question of law, on which I have all the facts, and others that will be proved, if necessary, namely, the sort of embargo the Russian Government put on these ships. And secondly, whether he has made out those superior wages, for you to say that he is entitled to larger wages. I say, as it at present stands, there is not a syllable of evidence on which the jury can safely say that, and therefore I consider the case to stand just where it stood before as to the question of law, and which, if necessary, may be argued again. It is perfectly clear therefore, that during the two times which the sailors were employed in actual service on board this ship, namely, in going out to Riga and in coming home, the sailors never thought that they were entitled to more; and the claim was made out during that time. The first and last were paid, leaving the intermediate time to be decided according to law. But it never entered into the mind of this man, that he was entitled to more than 6 guineas and a half per month till after it became a doubtful question, till after it became a question, Whether the embargo suspended or put an end to the voyage or not? Then it is said, on the part of the plaintiff, if I am not entitled to wages during that time, I am entitled to higher wages for the subsequent time during the performance of the home voyage from Riga to Plymouth. It never entered into the minds of the sailors, this was a case they had a right to make. The only question was, whether they were entitled to

to wages for the whole time at 6 guineas and a half per month. The owners say, you are only entitled to wages from the time I stated, and that the loss and burthen was to be decided between them; now, if they could have shewn on the supposition that the embargo did put an end to the contract, that there was that scarcity of sailors, that the plaintiff might have had this or that, that he might have had a superior rate of wages, it might be something. It is something like this:— Suppose a man makes a contract for at least a year and a half, at so much per cent. and it turned out that some transaction took place, and that he had not the use of that thing he contracted for, for the six middle months, and that it became a question, whether he was answerable for the whole time, or only for two times, to wit, the first and last six months, constituting one whole year. I say, I ought not to pay for the six months in the middle, because I had no use of the thing hired, and if in point of law it were to turn out, that I am entitled to 2 guineas per cent. for the middle six months, then I will have 4 guineas per cent. for the last; that would be a most preposterous proposition, unless he made out some case so clear, unless he shewed it was paid by others. Now, if they prove nothing of this thirty guineas per run, but if I on the contrary, shew that sailors were hired to come home from Riga at the ordinary wages, it puts an end to their case on the *quantum meruit*. I do not say it defends this case on the part of the defendant, it stands on this bottom; Whether this embargo so suspended the contract, or whether it destroyed the right to wages, the owner is not bound to say. With regard to the hardship of the case, it is a bad argument, at all times, in a court of justice: but here all the burthen seems to have fallen on the other side. The question is, whether the sailor is to lose his wages for six months, or whether that burthen is to be cast upon the owners, who, at all events, must lose their freight for six months? that is to say, whether this national calamity is not to be borne by all the parties equally? If it is not, then it must fall upon one side only, and the other will bear no part of it at all. If the law says so—be it so. I am anxious to prevent any decision at present by the jury, upon the

the question of law : namely, Did the embargo take away the right to wages ? You have not that question to decide. We have heard an argument on it already, and if another argument be necessary, it may be had when it comes before the superior court.

EVIDENCE for the DEFENDANT.

Captain BOWES, examined by Mr. Serjeant BAYLEY.

Q. Captain, what is your Christian name ?

A. John.

Q. What ship did you command, captain ?

A. The Rodney.

Q. You sailed to Riga, did you not ?

A. Yes, sir.

Q. And of course you were marched up the country with the rest of the crews, were you not ?

A. Yes, sir.

Q. Did you bring your men home with you again ?

A. All but one.

Q. What was he ?

A. He was a foreigner.

Q. How came you not to bring him home ?

A. He was taken from me at Riga.

Q. Before you were marched up the country, or afterwards ?

A. Before.

Q. Did you hire any other men to come home in the ship ?

A. I hired four.

Q. What were they ?

A. They were Germans.

Q. Did you take them by the run or by the month ?

A. By the month.

Q. By the month was it ?

A. Yes, sir.

Q. What

Q. What wages were you to give?

A. I was to give 2l. 6s. to one, to the other two I gave 2l. and to the fourth, who was a boy, I gave 1l. per month.

Lord ALVANLEY. Did you go any lower?

A. No, sir.

Mr. Serjeant COCKELL. I am sure, sir, you made a good bargain.

EDWARD AINSLEY, examined by Mr. GASELER.

Q. You were master of the ship Henry?

A. Yes, sir.

Q. You were at Riga when the embargo was laid on?

A. Yes, sir.

Q. Did you hire any fresh men to come home after the embargo was removed?

Mr. Serjeant COCKELL interposing. Is there any action brought against you, sir?

A. No, sir.

Lord ALVANLEY. Are your men paid?

A. Yes, sir. I hired two fresh men at Riga.

Q. What were they?

A. Russians.

Q. What did you give them?

A. 4l. 4s. per month to one, and to the other, 3l. 10s. To those who came from this country, I paid the whole price, except during the time of the embargo.

Mr. Serjeant COCKELL. Brother SHEPHERD, I admit we were fully paid, except during the embargo.

WILLIAM TOD, examined by Mr. GASELER.

Q. You were master of the ship, Baltic Merchant?

A. Yes, sir.

Q. I believe you had a man in your ship that came home a mate in another ship?

A. Yes, sir.

Q. What

Q. What had he?

A. 4l. 10s. per month.

Mr. Serjeant COCKELL. Who told you so?

A. He told me himself.

Mr. Serjeant COCKELL. I thought so.

Lord ALVANLEY. How came he to leave your ship?

A. My lord, he was an apprentice when I went out from London, and his time was out in Russia.

ROBERT CORNER, *examined by Mr. GASELEE.*

Q. Mr. Corner, you were master I believe, of the Thomas?

A. Yes, sir.

Q. Were you at Riga?

A. Yes, sir.

Q. Did you hire any fresh men after the embargo was taken off?

A. Five seamen and a cook. They were foreigners, and the cook was a black.

Q. What did you give the cook?

A. 5l. 7s. 6d. per month.

Lord ALVANLEY. For the voyage home?

A. Yes, my lord.

Mr. GASELEE. What did you give the seamen?

A. 5l. per month from Riga to London.

Lord ALVANLEY. I am surprized at that, I own.

Mr. WILLIAM FAIRLES, *examined by Mr. Serjeant BAYLEY.*

Q. You, sir, I believe, are owner of one of the ships at Riga?

A. Yes, sir.

Mr. Serjeant COCKELL. Are you one of those who have contributed to a subscription?

A. No, sir; I do not know of any subscription.

Lord ALVANLEY. I do not know any harm in it.

Mr.

Mr. Serjeant BAYLEY. Were any fresh men hired at Riga?

A. Yes, sir, there was one.

Q. Do you know what he was paid by the month on the voyage home?

A. 2l. 10s.

Lord ALVANLEY. A foreigner, I suppose.

A. A foreigner, my lord.

Mr. Serjeant BAYLEY. You paid him yourself?

A. No, sir, the captain paid him.

Q. Did you ever see him?

A. Yes, sir.

Q. Did you ever learn from him what was the rate of the wages?

Mr. Serjeant COCKELL. We admit it, if you will not have our admission, go on and prove it.

Mr. Serjeant BAYLEY. Had you any other men hired for the James and Rebecca?

Lord ALVANLEY. Are you the managing or actual owner of that too?

A. Yes, my lord, the first ship was the John and Isabella. There were two seamen hired for the James and Rebecca at 3l. 18s. per month.

Captain BALAM, examined by Mr. GASELEE.

Mr. GASELEE. Were you at Riga?

A. Yes, sir.

Q. Did you hire any fresh seamen there?

A. No, sir, I was offered several, but did not take any.

Lord ALVANLEY. At what wages?

A. They did not ask any wages; but I did not want any.

Lord ALVANLEY. For the voyage home?

A. Yes, sir.

REPLY

Mr. Serjeant COCKELL. May it please your Lordship, Gentlemen of the Jury, my learned Brother was in hopes—

Mr. Serjeant SHEPHERD interposing. I put in the whole of the plaintiff's demand which he delivered to us in this action.

Lord ALVANLEY. I do not understand you. Do you mean you should go into the *quantum meruit*? I know you need not be much afraid of it. You have permitted them to declare in two ways.

Mr. Serjeant SHEPHERD. We have not permitted—

Lord ALVANLEY interposing. I do not know what I am trying. Your permission is, to enter a count, or it means nothing. If you hold them to this particular you might as well never have permitted them to put in a count which they cannot give any evidence of. I am a little surpris'd at what has happened on this *quantum meruit*. This particular puts it out of the case.

Mr. Serjeant SHEPHERD. The court of Common Pleas granted a new trial, to see if any thing was due to the plaintiff on the *quantum meruit*. But I did not admit they have a right to turn that into a *quantum meruit*, because the ground on which the plaintiff proceeded, shews he is not entitled to more for the voyage home than he was for the voyage out. The question was, whether he was entitled to wages during the time of the embargo?—I say, mend your count, and if you have a right to—

Lord ALVANLEY interposing. Mend your count is of course.

Mr. Serjeant SHEPHERD. No, my lord.

Lord ALVANLEY. If you insist on the particular, I cannot do it. I wonder at you, because I think that they may bring another action on the *quantum meruit*.

Mr. Serjeant SHEPHERD. If you will not suffer me to explain myself, it is impossible I can be understood. I am not yet understood. I shall suppose there is a count on the *quantum meruit*, so that if even they made out a right, in point of law,

to that count, still it would be insufficient; because I contend, in point of law, that they are not entitled to a *quantum meruit*, because the plaintiff did not embark in this voyage on any other principle, than 6 guineas and a half per month, and therefore the plaintiff is not entitled, in point of law, to recover on a *quantum meruit*.

Lord ALVANLEY. You should give them leave to amend that: if they had been aware of this, they would have amended their particular.

Mr. Serjeant SHEPHERD. They would not; we applied to them for a new particular, and they said, they would not give it.

Lord ALVANLEY. In short, the *quantum meruit* was started by myself.

Mr. Serjeant SHEPHERD. I produce this, not to say they shall not go into evidence on the *quantum meruit*, but to shew the plaintiff has no right to recover upon it.

Lord ALVANLEY. They did not think of it. It evidently shews they were acting under a mistake.—I think it proves nothing at all.

Mr. Serjeant COCKELL. May it please your Lordship, Gentlemen of the Jury, this cause has already occupied a considerable portion of time; I cannot still but think, that it is a question of fact; and I do not think it will be at all necessary and I am heartily glad of it, to resort again to the court of Common Pleas for a decision of the abstract question of law; because I think there is enough before you, to enable you to decide this case on the facts, as they were understood between the parties, and as they were acted on without putting it to the Court to say, what shall be the effect of this embargo as an abstract proposition of law.

Gentlemen, my learned Brother hoped this case would not go on any by-point. If he meant by a by-point that which brings it to the contract that was entered into between these parties; I call that no by-point, but the only point on which it ought to be decided, and if you were to go on any other point, the greatest injustice would be done to my poor client. The merchants and ship owners may wish to have it put on the record,

and further argued, and that it may go to the supreme tribunal of the country to be decided—I mean the House of Lords. But I hope in God that will never be done at the expence of a poor seaman! How is he able to carry the question from jurisdiction to jurisdiction; and if my evidence should fail, then in what situation is my poor client? He would say, “take my wages, keep them, I cannot go from court to court; litigation has overwhelmed and ruined me.”

This is the situation in which the plaintiff would stand, and all the other poor fellows, who are anxiously waiting the issue of this cause.

My Brother has stated that this is a great and considerable question. I am heartily sorry it ever was made any question at all; and I cannot but think the ship owners and the merchants of this great city of London would have acted infinitely more wisely, and infinitely more to their own advantage as to what may happen hereafter, if they had paid all these wages during the time the embargo was at Riga without the deduction of a single farthing, and, without a single murmur. It would have given energy and stability to their articles.—It would have been a memorable lesson to every British seaman that went out of our ports, that whatever accidents might occur, that whatever calamities might happen, they were bound to stick to their timbers while an inch of the ship remained. It would have been a wholesome lesson to have been read, and extremely beneficial to the interest of the ship owners.

My Brother has told you in point of law, that an ordinary and common embargo does not determine the contract; but, that notwithstanding the interruption of the voyage, the contract remains—the contract continues. The law being thus established, I shall be glad to know what it is that is called an extraordinary embargo. Suppose instead of lasting six months it had lasted one month, is that to be considered as an ordinary or extraordinary embargo? Suppose it lasted for two months, or three months, where are you to draw the line? It seems to me, one thing only is to be said, that an embargo either rescinds all contracts, or that no embargo does.

My learned Brother says, it might have happened that these
ships

ships would never have been restored to this country. If that had been the case, there would have been an end of the question. It would have been like the ordinary case of capture, where all wages are lost with the ship. The ship is gone, the goods are gone, the freight is gone, and the seamen then would certainly not be entitled to a farthing. That is one of the calamities of war. It is one of the calamities seamen are prepared to meet. It is not only the law of this country, but the maritime law of all Europe. Every seaman perfectly knows, and it is no surprise on them if a ship, in consequence of negligence, imprudence, or calamity, is lost. The loss of the ship and freight is accompanied with this necessary consequence, that the wages are lost also, and therefore there is no hardship. Now, Gentlemen, let us see what was the situation of these parties when this ship left the port of London? They enter into articles, founded in great wisdom, and great experience, and great precaution is introduced into these different articles to prevent seamen from quitting their ships.

Lord ALVANLEY interposing. You have given no evidence about what the amount of the freight was.

Mr. Serjeant SHEPHERD. That is admitted, my lord.

Lord ALVANLEY. Let that be understood, or else we are all in the dark.

Mr. Serjeant SHEPHERD. She earned her freight *pro tanto*.

Mr. Serjeant LENS, She earned 6 guineas per ton.

Lord ALVANLEY. Let me take it : 6 guineas per ton: There has been no admission of that in this cause.

Mr. Serjeant SHEPHERD. But in the former admissions for the opinion of the court it was stated and argued upon.

Mr. GASELEE. It is 6 guineas per ton.

Lord ALVANLEY. You might have entitled yourself to freight, you might have provided for it by your contract, you might have added "the restraint of princes not excepted." The sailors are no parties to the charterparty. You might have made a contract entitling you to freight, notwithstanding this embargo, and if you had done that, you would have admitted them to wages, You have not done it, The sailors knew nothing

nothing at all of the charterparty, and that is very much relied on in one cause.

Mr. Serjeant SHEPHERD. The question then, with regard to freight, would be the same as it is now with regard to wages.

Lord ALVANLEY. It depended upon putting in the words, "the restraint of princes excepted" You have not put in that, you have not said to these sailors, that you would pay them on a voyage "the restraint of princes excepted."

Mr. Serjeant SHEPHERD. We did not give evidence on the freight, because we thought it was admitted.

Lord ALVANLEY. Yes, yes; but it must be before the jury. It must make part of the case. Supposing you had said it was at so much per month during the voyage?

Mr. Serjeant SHEPHERD. It might then have been perhaps a different question.

Lord ALVANLEY. This is the charterparty under which you say you have earned no freight. This detention is much against the owners, and therefore they say the sailors ought to have no wages. The charterparty is at so much per ton. They might have secured themselves against all this, if they would.

Mr. Serjeant BAYLEY. They might have secured themselves against capture too, my lord.

Lord ALVANLEY. Sailors cannot insure their wages.—It is your own fault for not providing for it.

Mr. Serjeant COCKELL. Gentlemen, I was about to say the folly, but I shall say the imprudence, of discussing a question of this sort, when I conceive so many injuries will attend the service if that question should go as the merchants wish it should, to the *dernier resort*. Let us see a little what is the nature of that contract between the parties when these men went on board at so much per month. They are to go the voyage out, and they are to come back with the ship; if they desert the ship during any part of the voyage, they lose all their wages, and if they continue on shore for a certain length of time, they lose all their wages. In short, these articles are to make them stick by the ship; that has been found to be the policy of the law

law, and as such, Courts of Justice do not permit seamen to insure their wages; and it proceeds on this idea, if their wages were to be insured it would make the mariners indifferent as to the doing of their duty on board the ship: In short, if they were at liberty to insure their wages they would not be the seamen they are. When this ship was going out to Riga and back again, these articles were entered into to go the outward and homeward voyage, and the sailors were to be paid so much a month during the continuance of the voyage; What is the continuance of the voyage? It is during the time of their sailing to Riga, taking in their cargo which they were to bring home, and till the ship was moored twenty four hours in good safety; this is their voyage. On this occasion an interruption took place by means of this embargo. It is said because this ship was not earning freight by the month, it was a great hardship on these owners—it was a great hardship on these owners to pay wages for these six months, but, Gentlemen, the law will cast the hardship on them. With regard to the owners, let us see how it presses on them; I will take the liberty to suppose this ship might have met with bad weather, might have been obliged to put into some port, and might not have been able to procure the materials to refit, and might have been obliged to remain there six months. The hardship would have been equally the same; and the captain and the owners could have made no defence. This was an accident, which happened during the course of the voyage, not foreseen, and altho' it is an hardship upon you, the seamen by their contract, are entitled to their wages. Now is there any greater hardship that could occur than the case I now put, and about which there can be no doubt. Suppose a ship to have taken three times the length of an ordinary voyage, it is very hard if the ship was freighted by the ton, and yet the same consequences would result. Did any seamen ever hear this argument used, that because for such a period of time the ship had been delayed at sea by stormy and tempestuous weather, that therefore the owners can detain the wages of seamen? How did the law stand when this ship went out of the port of London? it stood thus: notwithstanding an embargo, still the seaman is entitled

entitled to his wages. It neither put an end to freight nor wages. If any new law takes place in consequence of this extraordinary embargo, the seamen will be apprised of it, and will provide for it in the contracts they enter into with their captains. But, God forbid, that such an embargo should ever take place again! But in as much as it may take place, they may call on the Parliament to make a new law, or without going to the Legislature they may make a new contract, providing that if there is an embargo, so and so shall be done.

Lord ALVANLEY. I do not know you were not earning freight. I am not sure of that; I am not sure you have not a right to freight. Brother COCKELL I wish you would look at this charterparty and articles. A vast number of points have been taken for granted.

Mr. Serjeant LENS. I have never seen the articles till today.

Lord ALVANLEY. The ship was detained beyond the time, and the question is, whether they have not a demand for it.

Mr. Serjeant SHEPHERD. You know that will form an ingredient in the question of law.

Lord ALVANLEY. To be sure it will. If a man engages to pay so much per ton, and so much per day while the ship is detained at the port of loading, the question will be, whether he is to pay for the detention arising from the restraint of princes; whether he has not a demand for that as demurrage.

Mr. Serjeant SHEPHERD. That may form a fact in any question of law.

Lord ALVANLEY. And therefore the charterparty must be set forth. If they are defeated in this action, they might probably go for freight.

Mr. Serjeant SHEPHERD. The question is, whether this can be called demurrage.

Mr. Serjeant COCKELL. Gentlemen, if this event, which I deplore, is to make an alteration in the law, it ought only to make an alteration in the law after that event has taken place; and ought not to touch contracts made anterior to that event taking place. And as the law stood before, no embargo ever touched the wages or freight; but, notwithstanding an embargo

bargo might have taken place, they would have been entitled to wages. Why then this embargo, because it happens to be of a different sort, because it has endured a longer time, why it should make a difference, I do not know. Let me ask you this question. Suppose the late Emperor had changed his mind in six hours? according to the constructions of my learned Brothers, the contract would have been at an end. The restraint of the Emperor of Russia has annihilated the contract between the master and us, and we are now at liberty to ship ourselves with him at what rate of wages we please; and if he does not come to our terms, we will go else where. What mischief would result from a settlement of that sort? Good God! I tremble for the consequences!—Ninety or an hundred British ships, lying in a foreign port, without one hand to navigate them home, except on terms that would be infinitely more disadvantageous than the payment of the stipulated rate of wages during this extraordinary expedition. If they had held out such a loss has happened to us under articles, but articles are of so sacred a nature, that we are bound by our articles, and the loss must fall on us in this instance, and the sailors will have the benefit of it. If the owners had acted in that manner, they would have read a wholesome and salutary lesson to the seamen, and that nothing was to put an end to the contract but that they were to remain in the ship till she got into port. And if any case in future should happen where the sailors are detained, they will say—“ We cannot get home, this is like the Russian embargo; and though six months have elapsed we can have no wages; you have kept us six months in a foreign port from our wives and families; this is like the Russian embargo; it has put an end to the contract, and we will ship ourselves elsewhere.” I do not know, if circumstances such as these are to lay a foundation for the constructive extinction of the articles, where it is to end. If the articles are abolished, then every thing is plain; and therefore this case, not being foreseen, it may occasion that Parliament, or rather that Government may be applied to for some remuneration.

Now, let us see, Gentlemen, what my learned Brother has said in answer to my case; for I conceive I have laid before you sufficient evidence to shew that the contract, in the opinion of both the parties, continued; and that both the one and the other were acting under it. And I do not care a farthing what the effect of this embargo might be, because it is in the power of the parties to say, whatever effect this embargo in point of law may have upon our contract, it is our will and pleasure that it should continue in full force. I say they have done it. Whatever therefore the effect of this embargo might be, this was a valid contract.

My Brother says, if the ship had been captured, the seamen would have lost all their wages; no doubt they would: they enter into the contract with that knowledge. It is the law of England, and the maritime law of Europe, but is quite otherwise with an embargo: they had understood before, that an embargo never hurt their interest, nor touched their interest, and therefore they must suppose the contract continued.

My Brother has said, if the sailors had asked the captain whether the contract continued, he would have told them he did not know, it must be determined at law. Now I do not believe he would have said any thing about it. I believe he knew, as they had known, that an embargo never put an end to the contract. This is very hard on the owners, lads, they are now losing freight, but the embargo does not touch your interest; your wages are going on; it does not affect your contract: and that is the reason why these parties continued as they did, not only in this ship, but in the 90 other ships that were detained at Riga during the same period of time. If then, my learned Brother has called witnesses to shew that a greater rate of wages was not paid on the home voyage than on the voyage out, not a single witness has been called on the part of the plaintiff, to shew that one farthing more has been taken than the stipulated wages, which are admitted. This is the strongest argument to shew the old contract continued, since all the sailors came home in their own ships. And if it had appeared that any seamen, any British seamen had been at liberty, my learned Brother would have con-
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tended the contract did not continue. Why do you suppose the contract continued in the ship *A*, and the ship *B*, and so to the end of the alphabet, unless the impression on the minds of the captains and crews had been, that the old contract was in force. Says my learned Brother, not one single man has been called to prove a greater rate of wages was received for the home voyage: and for this plain reason, because all the sailors considered that their articles remained, and therefore every seaman came back to the port of London in his own ship. What stronger argument can you offer than that the crews of 90 ships, without the desertion of a single man, all went on board and came back again in his own bottom that took him out? How can this be accounted for, but because it was generally apprehended, but because it was universally understood, that every captain and every seaman thought the articles were continuing. If that had not been so, it is impossible to suppose that there would not have been some misunderstandings between some of the captains and some of their men, which happens now and then in such cases. Some of them, if they had conceived themselves to be at liberty, would have been glad to have gone elsewhere. The captain could have secured perhaps half the crew, but a great many would have been endeavouring to obtain great terms, and would have gone on board other ships; instead of that, every individual crew of these ships who were shipped from London, and natives of this country, came home in the very ship in which they went out. I do not think a stronger circumstance can be stated, to shew that it was understood, that the embargo had no effect on their contract, but that they all stood in the old, in the relative situation in which they went out, namely, that they were to receive so much during the voyage during the continuance of it, upon their rendering that service which they had contracted to do, when they shipped themselves under the articles. My learned Brother said, if the seamen had been set at liberty when the embargo was laid on, they would have been worse off; and that the captains would have had them on the homeward voyage for almost nothing at all. I think he did not see this in a fair view. He took it for granted they would

have shipped themselves on the same terms: they would have all got together in some alehouse—"Now we will not go home at 6l. a month—all these ships must continue at our will and pleasure; we are lords now. The 6l. a month will not do. You are a common seaman, you must have so much; you are of another description, your wages must be so and so—we will make our own terms." And I believe that would be the situation of all, and no captain could have got a crew, unless he had paid well for it. The captains would have said, we shall lose more by the loss of freight than by paying a little more wages, and therefore I think they would have soon come to the sailors' terms, that they might get off. They (the mariners) would have been in a situation to have had extraordinary wages.

My Brother supposes, that my case is founded on a conversation so as to make it a new contract. No such thing. I understand from the conversation, that in the understanding of all the parties, there was not a new contract at all, but that the old contract continued, and that they were to receive their wages according to the rate therein stipulated. I do not say there was a new contract I say, the old contract continued; I say that neither the owners nor the captain rescinded it, nor intended to rescind it, but that they have continued to act under it, both seaman and captain.

Now let us see what the evidence is—in the first place, the evidence of the first witness who was not called to-day, and whose testimony was read from my Lord's notes, and whose name was John Watson, is very important. He proves the captain had a conversation with him, and said to him, when he was grumbling about his disagreeable situation, "I have the hardest of it, your wages are going on"; and altho' this was only said to one individual of the crew, yet I contend it applies to the whole crew, and is precisely the same thing as if it had been addressed to them all in a body. Why then, they do this. After they are restored, they get on board the ships, and every man on board his own ship. I say this is a most powerful fact on this part of the case, to shew that it was the impression of every man that he was acting
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under his old contract, and unless the captain had been of that opinion, he would not have taken them on board. Before the embargo was laid on, he thought he had the power of making a new stipulation with regard to the foreigners who had left the ship, and had gone to their Consul: when they returned, he refused to take them on board unless they entered into fresh articles. That shews to a demonstration, that with regard to them he conceived it was in his power to vary the contract. You see therefore, Gentlemen, the captain himself draws the line. When the contract was at an end (you shall judge him by his own act) he says, "I will not receive you on board unless you come on my own terms." And therefore, when my learned friend tells you, that the captain would have told them if they had asked him whether the contract continued, he would have said he did not know. That is not perfectly correct: for in fact, by his conduct, he did tell the Spaniard and two Swedes that their contract was at an end; and the only reason that can be assigned why he did not act in the same manner towards the British part of the crew was, that he conceived he had no right, that they were acting under their old articles. But with regard to the foreigners, he endeavours to make a better bargain for himself; otherwise, why should he refuse to receive these men, unless they would come to his own terms? Does it not follow then, that as he did not make a new contract with the other part of his crew, that he thought the old contract was in force? and proves, incontestibly, that he and all the rest believed they were acting under the same articles. If otherwise, can you believe that out of 90 ships or more, some of the crews would not be making some provision, and endeavouring to advance themselves by that accident? But you have the concurring testimony of the crews of 90 ships, without talking of any new contract, varying an *iota*. All these crews came back to England again in the same ships in which they went out.

The evidence of ANTHONY WATTS, the black man, appears to me to be conclusive on it. He says, they were all marched up the country, that they were all under the control of the captain; the Government, the superintendence of them: that he and all the rest of the crew
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went with him. This poor man, as well as all the rest, began to be very ill supplied with the necessaries of life, and however obedient a seaman is, being in great want of food, he applied to the captain and wanted something to be added to the very scanty allowance that was made to him and the rest by the Russian Government. He had heard that a subscription had been made for them by the London Merchants, and that it had been remitted over to Russia. He hoped therefore the captain would give him a little money. He refused to do it; but told him to go and get some beef, and that he would pay for it. He did not chuse to do it, and thought he himself could lay the money more agreeably out. I think the captain behaved prudently. He (the black) began rather to discover a mutinous disposition, and seemed not to behave himself very properly. What says the captain, why, "if you will only obey as before, if you will only be obedient to my orders, you are to receive your old wages, your old wages are going on: if you will only return to your duty, I will not avail myself of this mutinous disposition of yours, if you will return to your duty you shall have your wages." Have you not out of the mouth of the captain, on the occasion, that which speaks extremely strong on the subject? Where a seaman has shewn a little disposition to be refractory, the captain promises to take no advantage of this, "do as you have done heretofore, and all your wages are going on." This is out of the captain's own mouth. But this was not said to the present plaintiff, it may be observed. But I contend it is the same as if it had been addressed to him. There was no different agreement entered into between the captain and some of the crew; there was no difference between the case of one man and another. They all stand on the same footing; and the proof that shews the contract was continuing, with regard to one of the crew, proves it with regard to all the rest; and if so, this plaintiff will be entitled to recover. What is done with regard to the foreigners when they wish to come on board again? The captain proposes fresh articles to them. If the captain had had the smallest idea the contract was at an end, with regard to the British part of his crew, he would

would have said, this embargo has put an end to the contract, let us see on what terms we can agree. Not a word is said with regard to the embargo; there is not a single expression as to any thing relative to the question. What account can be given of the silence and acquiescence of the parties, but that they were all agreed the wages were continuing as stipulated; and for that period which had been taken out while they had been up in the country?

This man proves another thing, and which I say is a strong fact in this case. Having been told this by the captain, when he got back to Riga 30 guineas were offered him, but the man did not take them. His own captain had told him his wages were going on, and therefore he was in as good condition under him. He never mentioned it to him. One of the crew, a foreigner, who went on the outward voyage, had got on board a Prussian ship during the time the English sailors were up the country; and when they returned, one of the witnesses was desired to get hands, and one of the captains with whom he had gone out from this country, was willing to have given him very high wages, but the Prussian captain getting some information of it, confined him, so that he had not an opportunity of deserting back again to his former ship. This then, is another circumstance, which as it seems to me, clearly shews it was the understanding of all the parties that the articles were governing them.

Why, then—let us see what is done. No man was engaged; a few foreigners were, but not an Englishman was to be found; that proves, that every Englishman stuck by his ship, and altho' several crews wanted hands, every British seaman who had been marched up the country with his captain, and every British seaman who had been shipped on board on the outward voyage, returned to England in his own bottom. This is strong cogent evidence, and so strong as to make it conclusive, that all parties were acting on the faith of the articles; and why they should not I cannot tell: for, as the law was, no embargo altered the nature of the contract. Why, then, Gentlemen. I have called several different witnesses who have proved the general understanding of the crew

of every ship, of every captain and crew, that the articles were continuing.

What is the evidence my learned Brother has called? If the articles continued, that puts an end to the cause: we must take under the articles, and not any sum we may deserve. My Brother's case furnishes this observation—that out of six men to make up their crews, none but foreigners were to be found; and shews that no British seaman was at liberty, but that they all stuck fast by their ships.

Now, Gentlemen, these are the observations that occur to me on this case. And before I sit down, there is one circumstance which I wish to advert to. My friend wishes a special verdict to be found; if that is done, my poor client must leave the country; but if you decide it as I trust you will, that the contract continued, whatever may be the effect of the embargo? then your verdict will be binding and conclusive, and there will be no more litigation on the subject. The seamen will have their wages, and the law between these parties will be at an end; and as this is a great and important question, in which the interest of the country is much at stake, let them go to Parliament, or let the merchants devise other articles, but do not let poor seamen suffer by settling great commercial questions. If you think there is sufficient evidence in this cause to shew that the parties were acting under their own articles, that they never intended to desert them, that they were always under the control of the captain, you will say so. This is the case of seamen suing for so much per month, to wit, 6l. 16s. 6d. per month, for six months.

Gentlemen, my learned Brother says it is an after-thought, that neither captain nor crew knew how the law stood; I believe they were satisfied as to the law; that with regard to this embargo, it had the same effect as any other, and that it never occurred to them till they came to Doctors' Commons. I think they have not any fair ground to start it; and if the Judges of the land say it ought not to be started, and that all these poor men are to be deprived of the benefit of their faithful services, because new events have taken place, to make an alteration in the law; when they went out notwithstanding
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any embargo, and as a more particular embargo had happened, it does not seem to me to vary the contract.

But if you are satisfied on this evidence—all these parties understood they were acting on the footing of the old contract, and I think the evidence is exceedingly strong, not with regard to the case of an individual crew, but with regard to the crews of 90 ships; and when every one of those ships came home without any new contract being proposed, and without any individual proposing any new terms, and all the crews of 90 ships acting in the same uniform manner, and never hearing any thing of a new contract; it is the strongest evidence that they were all acting upon the old contract.

Gentlemen, I hope you will say my client is entitled to 6 months wages, and if so, you will find a general verdict, which will do complete justice to the plaintiff, and put an end to all further litigation between these parties.

Lord ALVANLEY.—Gentlemen of the jury, this Action is brought by the plaintiff, who was a seaman on board the ship called the *Fisburn*, of which the defendant was captain, to recover the sum of 45*l.* which he says is due to him for wages: And to be sure, this action originally arises out of the articles executed between the captain and the crew. There does not seem to be any idea in the mind of this plaintiff that he was entitled to any compensation for any thing done not under the articles. However there may be many questions which were perhaps entirely unknown to the parties at the time they entered into these articles which the court may enquire into. Supposing, in point of law, these articles should be at an end, one question may be, what he ought to receive, supposing the parties knowing the law, had entered into a new contract, that is to say, what would be the fair compensation not fettered down nor bound by any articles? if they had entered into a new contract from Riga back to England only; and it was principally for that purpose that the present cause has come back again for the further consideration of a jury. First of all, whether the plaintiff has

made out his case under the articles. These articles were, as I understand them, that this man should serve as a mariner on board this vessel on a voyage from the Port of London to Riga, to take in a cargo there for London or any Port in England, and the master contracts, that if the plaintiff shall perform this voyage, he will pay him those wages, that answer the sum of money set opposite to his name, and which amounts to 6l. 16s. 6d. per month.

Now the plaintiff insists on it, that he has performed this voyage, and that it ought to be calculated from the period he left the Port of London till he returned to Plymouth, and that they ought not to deduct any thing from it.—That is, the voyage which he contends, in point of law, still continued during that whole time : and most unquestionably, if the voyage did continue during the whole of that time, unless there is some positive law, or some implied law of England to the contrary, if the case of an embargo does not put an end to the voyage, does not suspend the right to wages, ; in that case he will be entitled to recover, unless you be of opinion it puts an end to the contract ; if it does, he must be satisfied as on a new contract for a certain length of time. Whether he should be paid more it will be for you to determine. Very slight evidence (if any evidence) has been given, that he could have earned more ; and indeed it is very difficult to be ascertained — I can hardly think he can be entitled to more than according to the rate of the outward bound voyage. But the first question will be, whether he has served the whole of that time according to the meaning of the articles of this ship ?

I have stated to you the evidence * of JOHN WATSON, which it was agreed should be read from my notes.

The next witness was ANTHONY WATTS. He said, he was one of the crew of the *Fisburn*, and that on his return home he was pressed and has been in London only a very short time. He was on board the *Fisburn*, at Riga,

* See *ante*, page 63.

When the embargo was laid on, and was marched up the country with the rest of the crews, and when he returned to Riga there was a great many English ships there, and English captains. A Liverpool captain applied to him to come home with him, and offered him 35 guineas for the run. But he never told his own captain any thing of it. After he had been a while up in the country he heard a subscription had been raised by the merchants in London and remitted to Russia for them. He asked the captain to let him have the the money that had been subscribed. The captain refused to give him any money, but said, if he would take it out in Beef, or go to the market, he would pay for it. On which WATTS said he was able to take care of his own money, and he said he would not take the beef. They wrangled about the money, and then the captain said, if you have a mind to own me as your master, and do as you did before, your wages are going on. The captain never asked him to sign any fresh articles. The next witness is JOSEPH READ. He says he was a sailor, that he went to Petersburg in an American ship, and was at Cronstadt and came home in an English ship. He had 8 guineas per month. I think this proves little or nothing, unless they could shew that Riga and Cronstadt were in the same situation with respect to the scarcity of seamen, and that wages at these two places were the same. The next witness was JOHN MACKINTOSH. He was a sailor on board the John and Isabella of London, and remained on board till about the 18th of December, when he followed the rest who had been sent up the country. When he returned, there was a very great scarcity of seamen. Two Foreigners were shipped on board, but they were not seamen, he did not know how much they had. The succeeding witness was JOHN SCOTTO. He was a sailor on board the Rodney. He said, after the sailors returned to Riga, there was of course a scarcity of seamen, because the Foreigners had left their ships. He said Captain Swales offered him 30 guineas for the run home, but that in consequence of what the captain had told him—We do not know what that was, he did not accept that offer. The last witness was

JOHN FORD. He said he was a sailor on board the William and Mary, of Shields. He was at Riga, and was marched up the country; when he came back he found a Foreigner, who had been originally one of their crew, then belonging to a Prussian ship. He, the witness, was sent by his captain to search for hands. He took this man to the captain, and he promised him if he would come on board, that he should have all the wages he would have had under the articles. He promised to desert from the Prussian ship, and to accept of that offer. But the Prussian Captain had got some suspicion of it, and kept him in confinement, so that he could not come back, and they were obliged to come home without him. The witness also brought the captain three Lubeckers. The captain offered them 6l. per month each, and not 30 guineas as he had offered to the seaman, who had been on board his ship. And they did not agree on the price.—Gentlemen, this is the evidence on the part of the plaintiff.

On the part of the defendant you have heard a great many observations. With respect to the effect of the embargo the court only can decide. If this man (the plaintiff) is entitled to be paid for the home voyage only, supposing a new contract had been made, and that they had not acted under any misconception of the law, there is no reason for you to think that more ought to be paid than what was paid, namely by the same rate as on the outward voyage, and which was received under the articles. The first witness on the part of the defendant was JOHN BOWES. He said he commanded the Rodney. He said he brought all his men home again, except one, who was a foreigner, and was taken from him at Riga, before he and his crew were marched up the country. He hired 4 men to come home with him in the ship. They were Germans and so far from paying them more, supposing they were equally good seamen he paid them less. But you will suppose they were not. He paid one 2l. 6s. per month, to two 2l. each, and to the fourth, who was a boy, 1l. per month. The next witness was EDWARD AINSLEY. He hired two fresh men at Riga. They were Russians. To one
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of them he gave 4l. 4s. per month, and to the other 3l. 10s. The succeeding witness was WILLIAM TODD. He said there was a man on board his ship who went out an apprentice, and his time being out in Russia, he hired himself as a mate on the home voyage at the rate of 4l. 10s. per month. But the witness said he did not know any thing but what he told him. ROBERT CORNER was next examined. He hired five seamen and a cook. To the cook he gave 5l. 7s. 6d. per month, and to the sailors 5l. per month. WILLIAM FAIRLES said he was owner of one of the ships at Riga, and hired one fresh man on the home voyage at 2l. 10s. per month. He was owner of another ship for which two fresh men were hired at the monthly wages of 3l. 18s. each. MATTHEW BARRON was next examined. He was offered several hands, but he did not want any, and did not ask them their price. This is all the evidence, on the one side and on the other.

Gentlemen, if this case were left on the question of the *quantum meruit*, I do not see sufficient evidence for you to take on yourselves to say what would have been the vast number of sailors left at liberty, if all the contracts had been understood by all the parties to have been at an end: there must have been a monstrous number of sailors; and though the ships must be manned, it is hardly possible to know what they could have got. If such hands had been at liberty, they might have got them for less. When this cause came on, it was at my suggestion this point came before the jury; and I thought there would be decisive evidence, that fresh hands might have made more on the home voyage, from Riga to England. The evidence you have heard; and it does not appear to me to be sufficient for you to say, that, had they been at liberty, they could have got more on the voyage home. What was to be the effect? These men would not have staid at Riga; and the ships must have had hands. Whether they could have charged more than on the out voyage, you do not see. Those who were hired on the home voyage, the foreigners, had much less; but the quality of the seamen is to be taken into the account in that calculation. If it comes to that

that part of the case, I hardly think the proof before you sufficient to enable you to say, that if they had not been hired at Riga as on a new contract, they could have had more wages home; but, if you are satisfied they could, you will say so, and you will tell me how much. But then, as to the grand point in the case, nothing is more clear, unless there is some positive law to destroy this voyage legally instituted, that he is entitled to wages. But it is said there is a law; and there is a law in another country, that talks about half wages; but we have no such law in this country. And therefore the first question we have is, merely whether this voyage continued or not in point of law? I wish that to be reserved. I am not quite clear I have made up my mind on it. We have only had one argument, and probably there will be another.

The next question will be, supposing the contract of such a nature that either party may be at liberty, if he thinks fit, to be off; as for instance, it would have been a very hard case if this embargo had lasted three years, if they were to pay all that time, and go on maintaining their sailors, and paying them, when they, according to the terms of their charterparty, were gaining nothing. It may possibly be the case, and it may possibly be the law. Either of them may perhaps have said, there is an end of our contract. I take it for granted mutually they might have done so; but they did it not. The next question therefore is, whether they acted on it as an existing contract? and whether, supposing by the law of England the contract was put an end to if either party chose, whether, in the present case, the master of this vessel has not agreed that this contract should continue? and, to be sure, there is some evidence on that point. It is said this is done, owing to the ignorance of the parties. I believe it was.

The first question I would ask you in point of fact is, if you are satisfied the master undertook to them, if they would go on and work as sailors, as they did before, that they should receive their former wages; for if he did, it was was competent to him to do so, whatever the law may be; and if he did it, you may give your verdict for the plaintiff, and state that

that for your reason for so doing. I do not know what other facts to state to you. There was no express agreement; but if you are of opinion that the master undertook to pay them—if you are satisfied he did that, I desire you will say so. I have nothing else to submit to you. With regard to the consideration that it would be hard on these merchants if the harshness of the late Emperor of Russia were to impose so heavy a burden on the subjects of this country. But it must fall on somebody; and the question is, on whom the law throws it? If the merchants and ship-owners do not like these articles, they may make such articles as they think fit, and they may provide against all contingencies. And I rather think it would be wiser in them, when a state of war is going on (though, perhaps, they may say this was such an embargo as was not to be expected), to make a special provision for it. It is contended, that this is not the case of a common embargo: there is nothing in the articles that points to that; the restraint of princes is not mentioned.

It was very truly said, that freight is the mother of wages; and as this ship was not earning any freight for six months, the sailors are not entitled to wages. I am not sure of that at all; perhaps it is taking too much for granted. They might have provided against this embargo; they have not said a word about it in their charterparty; but if the ship is to be detained beyond a certain length of time, that is to be paid for; and whether this detention be within the words of the charterparty, is matter for further consideration, and for the Court to determine. But what is most material, is that the sailors did not know what agreement the parties made for freight. I should be sorry if you were to determine any doubtful point where there are very considerable mercantile questions; and whatever you may do in this, the case of some other ships will be submitted to the consideration of the *dernier resort*, if it can be done without any expence to the sailors. If it is to end in a special verdict, the Court will never turn it into a special verdict for 45l. It should be only a case to be turned into a special verdict, if the Court should think fit to say it should
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before. If you are of opinion (whether the law did or did not put an end to the contract), that it was agreed between these parties, that the contract should not be put an end to, and it was continued on the undertaking of the master to pay them all their wages provided they went on board and brought home the ship, then you may find a general verdict, and give him his wages; if not, you may find the same sort of verdict as before. If you should be of opinion this man did agree with them that they should have their whole wages—if you are clearly satisfied it was so, you may find for the plaintiff generally, and telling me it was on that fact. If you have any doubt that point should be reserved, there are several other cases, I am told, which are depending on this; but I think if it turns on that point, if it comes on the new agreement in this ship, why are the others to abide by it? are all those ships in the same situation? (One of the learned counsel said, “No, my lord.”) If the Gentlemen of the Jury should find a verdict on one of these other points, that would be *deciders* the general question.

Gentlemen, I shall give you the case as it was stated before; and, if you wish to leave to the Court the determination of the law, you will find the facts of the case. The first fact is, whether you are of opinion there was any agreement between them that this contract should continue whatever the law might be? Secondly, that it was made in ignorance of the law, the parties not knowing what the law was, and leave it to the Court to determine whether this will make the defendant liable. I heartily wish this cause could be put in a shape in which it could receive the decision of a Court of Justice. I heartily pray that any thing may be added that belongs to the case and which can bring the question fairly and fully before the Court, there is a vast number of them, and therefore it were to be wished that the first that is decided might decide all the rest, or at least as many of them as possible. To have many of these causes tried is neither for the honour of the law nor the advantage of the parties, for the expence of the law will run away with the wages, and therefore, gentlemen I think you may read over these facts.

The only question is whether any new agreement was entered

tered into with the crew of this ship; with respect to this point, if you are satisfied there was, you will find a verdict for the plaintiff, or you will find the facts and leave it with the Court, and you will tell me whether you think (for I wish to know what you would state if you think a new contract was entered into) whether the 6l. 16s. 6d. was sufficient per month for the home voyage, or if you think the plaintiff ought to have more than that, you will tell me how much, then there will be an end of the question on the *quantum meruit* whatever becomes of the other question.

The gentlemen of the Jury, after being out of court about half an hour, returned, when the Foreman said—We find a general verdict for the plaintiff for 40l. 19s.

Lord ALVANLEY. Now, gentlemen, do you find your verdict upon any contract that you supposed took place between the one and the other of these parties. Do you find it on a promise made to them by the captain, that if they would come on board and do their duty they should have their wages?

FOREMAN. Yes, my Lord.

Lord ALVANLEY. That is the ground upon which you find your verdict. But at the same time you find this was made in ignorance of the law, you meaning to say it was understood by both parties, that he promised them and that they understood they were to have their wages, it being in perfect ignorance of the law.

JURY. Yes, my Lord.

Lord ALVANLEY. How came you to take that sum off. The whole amount was I believe 45l.?

JURY. We found 40l. 19s. that being six months wages, at 6l. 16s. 6d. per month.

Lord ALVANLEY. Now, gentlemen, would you have any objection to give him these damages, and to state all the facts, and to add them to your verdict?

Mr. Serjeant COCKELL. My Lord, I hope your Lordship will not impose that on the gentlemen of the Jury.

Lord ALVANLEY. The Jury find, that while they were up in the country, the captain not knowing what the law might be, but assured them, if they would stay and continue in his service, they should have their whole wages.

JURY. Yes, my Lord.

Lord ALVANLEY. The Jury have found, that the captain did assure the crew, that if they continued to serve on board, and brought home the ship, they would be entitled to their whole wages. Supposing this was made in ignorance of the law, the question will be, whether that would avail or not?

Mr. Serjeant COCKELL. They said they found a general verdict.

Lord ALVANLEY. Yes. If the Court do not think that warrants a general verdict, they may grant a new trial. Whether the law will imply that a promise so made shall make the party liable, will be another question. However, I wish it may rest where it is.

COURT OF COMMON PLEAS,

TRINITY TERM,

Friday, June 25, 1802.

FISHER against WARD.

ON a motion to set aside the verdict in the second trial of this cause :

Mr. Serjeant SHEPHERD said—My Lords, in the case of Fisher against Ward, in which I moved the other day that the verdict might be set aside, for the purpose of having the question of law decided, and which the Court desired might stand over till to-day, I wish to state on the part of my client (the defendant) how this case stands. It is not a case where there has been two trials, and in which the Jury have twice found a verdict the same way on one issue ; but on the first trial the facts were agreed upon, and it was reduced to a case, and the Jury gave a verdict for the plaintiff, subject to the consideration of the Court on that case, and when that case came on to be argued, the Court suggested another question that might arise, namely, the question on a *quantum meruit*, supposing the law put an end to the contract ; and therefore the Court granted a new trial, which was for the benefit of the defendant, as well as of the plaintiff. The new trial was granted for the purpose of ascertaining how much the plaintiff deserved to have from Riga to London, on the supposition that the embargo in point of law put an end to the contract ; and on that point the plaintiff made out no case, but left the case just as it stood before, namely, on a conversation between the captain and some of the sailors when they were up the country. Now, my application to the Court was to set aside the verdict, and to grant a new trial, or that the verdict should be subject to the consideration of the Court on the question of law as it stood before the second trial, with the addition only of one fact. The Jury having found a verdict on the second trial, did not give the plaintiff a right to the benefit of that verdict, unless the law was with him. It is not a question of fact that could turn the verdict one way or

another,

another, but it is a question for the opinion of the Court. Taking all the facts as they were proved, still I say, in point of law, the plaintiff was not entitled to the verdict. Mr. Justice Heath, the other day, said, as this had been a second time tried, he had a doubt whether the Court could grant a new trial after the second trial. That observation would be extremely strong in many cases, as for instance, where a Jury, having found a verdict on the first trial, without any question reserved, and the same point had stood for a second trial, and a second Jury had found the same verdict on precisely the same issue. But this case is not so circumstanced; because at the first trial the facts were all agreed upon. There was a new point started by your Lordship, which was very fit to be enquired into. The plaintiff did not succeed on that, which leaves the case where it stood before the second trial, with only the circumstance of one additional fact, which was a conversation with the Captain with some of the sailors up the country. That circumstance may be added to the case. It may be said, why is the plaintiff to be at the expense of trying the question of law? Wherever a plaintiff brings an action, and a question of law arises in the case, he must be at the expense of trying that question of law.

Lord ALVANLEY. The question now to be decided is, whether we, in our discretion, shall force this man, after two trials, to litigate this great question, which the body of the merchants of England are desirous to have decided. The question is, whether we are to compel a single sailor to do this who has brought his action for 40 l. and there is a general verdict, which will conclude nothing at all in the record—and our giving judgment can produce no precedent on the point; and therefore I have no difficulty in saying, that if the merchants will not do what I proposed, they have no right to expect where there has been a general verdict, where new points of law cannot be raised and set up as a precedent, and cannot affect this embargo, they have no right to expect a new trial. By this general verdict no question of law whatever is decided, and you are left to take another cause to try, so that the Court may have it on the record in the shape of a special verdict, a bill of excep-

exceptions, or in any way you think fit to have it. Let us see what this case is which you wish to make the leading case, in order that it may go up to the House of Lords. The question only is in point of discretion, whether we should do justice to the present plaintiff, if we were to bring it into that shape. Now the facts are these : this man brings his action for 40l it is very true the case that arose did involve these great questions. There was a case reserved ; that case went to another trial, and it was very much varied in a very considerable point, namely, not merely leaving the question, whether wages were or were not due during the continuance of the embargo, but supposing it put an end to the contract, the question might be, whether a new contract might be implied or proved. In this case, it was proved that the Captain said, if they staid their wages would go on. The Jury, relying on that, gave the plaintiff a verdict for 40l. Now take the opinion of the Court on the question of law on the next case. The Jury having given a general verdict on this case, the question does not arise. It would be too much to send this to another trial to have the question of law decided, when the body of merchants will not pay the expence of it.

Mr. Serjeant SHEPHERD. I do not at all understand.

Lord ALVANLEY. I must not be replied upon.

Mr. Justice ROOKE. I do not know how we can set aside this verdict. The Captain says to this man, go on board, and your wages are going on ; I think that is decisive.

Mr. Serjeant BAXLEY. That was said to another man, and not to the plaintiff.

Mr. Justice ROOKE. It was said to one of the crew. It was said to one of the seamen who was on board that ship.

Lord ALVANLEY. The only question is, whether it shall go to a third trial ? and I am clearly of opinion that it ought not.

Mr. Serjeant BAXLEY. We do not ask for a new trial, but only for a special verdict. We only wish to have the question of law determined.

Lord ALVANLEY. The question of law does not arise on this case. You must have another case to have the question of law decided. I beg to have it understood, that this case decides

no question of law; it is merely the case of seamen's wages, and there is judgment for the plaintiff for a certain sum. The word embargo does not occur in the record, and therefore it does not include any thing in point of precedent, and we are not to be understood as giving judgment on this question. To be sure it will be a question that may arise in future cases; but if the body of the merchants of England will not be at the expence of trying it; if it were to go back to a third trial, in order that it might go to a higher tribunal, I think, if we were to grant a new trial at the expence of the plaintiff, we should do him injustice. It decides nothing; I only beg to have that understood.

Mr. Serjeant SHEPHERD. I have misunderstood the whole of the proceedings.

Lord ALVANLEY. I do not give any opinion on the great question of law, as to the effect of the embargo, but have left that to be decided in some other case.

Mr. Serjeant BAYLEY. The only thing we wish to have decided is the question of law.

Mr. Justice CHAMBRE. There is no foundation for saying, in the exercise of our discretion, that this man should be further harrassed: both parties mistook the law; that is probable in this case. It was left to the Jury to give the plaintiff what damages they thought fit; they have exercised their discretion, and it seems to me, though they may have been wrong, that this man ought not to be disturbed with a new trial.

Lord ALVANLEY. I would put it seriously to the consideration of the merchants of this great city, whether it would not be to their credit to make up a purse, and have this case put on the record, and let that decide all the rest.

Mr. ATCHESON. My Lord, my client, the defendant, stands alone.

Lord ALVANLEY. The demand is to the amount of several thousand pounds. Why might not the merchants subscribe towards the carrying on of this cause?

Mr. ATCHESON. My Lord, the owner has since become a bankrupt.

Mr. Serjeant BAYLEY. The owner is an insolvent person, and

and therefore I hope your Lordships will give the defendant a short time to pay the money.

Lord ALVANLEY. What you are now asking for, namely, to make this the leading case, shews it does not belong to any individual.

Mr. ATCHESON. I applied to many owners, my Lord, and they hesitated in giving me any direct answer.

Motion to set aside the second verdict, or to grant a new trial, refused.

A P P E N D I X.

No. I

The Seamens Articles of the Ship Fishburn.

IT is hereby agreed between the master, seamen, and mariners of the ship Fishburn, now bound for the port of Riga, and ABRAHAM WARD the master or commander of the said ship Fishburn, bound from the port of London to the port of Riga, to load a cargo for London, or any other port in England. That in consideration of the monthly or other wages against each respective seaman or mariner's name hereunto set, they severally shall and will perform the above mentioned voyage, and the said master doth hereby agree with, and hire the said seamen and mariners for the said voyage, at such monthly wages to be paid pursuant to the laws of Great Britain, and they the said seamen and mariners, do hereby promise and oblige themselves to do their duty and obey the lawful commands of their officers, on board the said ship, or boats thereunto belonging, as become good and faithful seamen and mariners, and at all places where the said ship shall put in or anchor during the said ship's voyage, to do their best endeavours for the preservation of the said ship and cargo, and not to neglect or refuse doing their duty by day or night, nor shall go out of the said ship on board any other vessel, or be on shore *under any pretence whatsoever* till the voyage is ended and the ship discharged of her cargo, without leave first obtained of the master, captain, or commanding officer on board, and in default thereof they freely agree to be liable to the penalties mentioned in the Act of Parliament made in the second year of the reign of King
George

George the Second, intituled an Act for the better regulation and government of seamen in the merchants' service, and the Act made in the thirty seventh year of his present Majesty's reign, intituled an act for preventing the desertion of seamen from British merchants' ships, trading to his Majesty's colonies and plantations in the West Indies. And it is further agreed by the parties to these presents, that twenty four hours absence without leave shall be deemed a total desertion, and render such seamen and mariners liable to the forfeitures and penalties contained in the acts above recited; that each and every lawful command which the said master shall think necessary to issue for the effectual government of the said vessel, suppressing immorality and vice of all kinds be strictly complied with, under the penalty of the person or persons disobeying, forfeiting his or their whole wages or hire, together with every thing belonging to him or them, on board the said vessel; and it is further agreed, that no officer or seaman, or person belonging to the said ship, shall demand or be entitled to his wages, or any part thereof, until the arrival of the said ship at the above mentioned port of discharge, and her cargo delivered not less than twenty days, in case the seamen are not employed in the delivery; and it is hereby further agreed between the master and officers of the said ship, that whatever apparel, furniture and stores, each of them may receive in their charge, belonging to the said ship, shall be accounted for on her return, and in case any thing shall be lost or damaged through their carelessness or insufficiency, it shall be made good by such officer or seaman by whose means it may happen, to the master and owner of the said ship; and whereas it is customary for the officers and seamen on the ships return home in the river, and during the time their cargoes are delivering, to go on shore each night to sleep, greatly to the prejudice of such ship and freighters; be it further agreed by the said parties, that neither officer nor seaman shall, on any pretence whatsoever, be entitled to such indulgence, but shall do their duty by day in discharge of the cargo, and keep such watch by night as the master or commander of the said ship shall think necessary, in order for the preservation of the above; and whereas it often happens that part of the cargo

cargo is embezzled after being delivered into lighters, and as such losses are made good by the owners of the ships, be it therefore agreed by these presents, that whatever officer or seaman the master shall think proper to appoint, shall take charge of the cargo in the lighters, and go with same to the lawful quay, and there deliver his charge to the ship's husband, or his representative, or see the same safely weighed at the king's beam, and in consequence of their true fidelity, such officer or seaman shall be entitled to two shillings and sixpence each lighter, exclusive of their monthly pay, and should it so happen that lighters are detained a considerable time at the quay before they can be unloaded, such officer and seaman so appointed, shall in that case be entitled to two shillings and sixpence for every twenty-four hours, exclusive of their said monthly pay; that each seaman and mariner who shall well and truly perform the above mentioned voyage (provided always that there be no plunderage, embezzlement, or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to their wages or hire that may become due to him pursuant to this agreement: that for the due performance of each and every the above mentioned articles and agreements, and acknowledgments of their being voluntary and without compulsion, or any other clandestine means being used, the said parties have hereunto subscribed their names, the day and month set opposite to their respective names.

Place and time of Entry.	Men's Names.	Quality	Witness to each Man's signing	Pay in the River		Wages per Month, or by the Run for the voyage.	Whole Wages
				Whole	Half		
1800. London, Sept. 6.	John Andrew Fisher.	Mate.	A. Ward	—	—	£. s. d. 6 16 6	£. s. d. — — —

No. II.

Charterparty of the Ship Fishburn.

THIS charterparty of affreightment, entered into this twenty-fifth day of June, in the fortieth year of the reign of our sovereign Lord George the Third, and in the year of our Lord One thousand eight hundred, between Mr. Thomas Ward, of Newcastle upon Tyne, owner of the good ship or vessel, called the Fishburn, Abraham Ward, master, of the burthen of three hundred and sixty register tons, or thereabouts, now 'on a voyage from Dantzic to London, of the one part; and Mr. John Head, of Newcastle, for Messrs. John Roberts and Co. of London, merchants, freighters of the said ship, of the other part: Witnesseth, that the said Thomas Ward hath this day letten the said ship to freight for a voyage from Riga to London, Chatham, Portsmouth, or Plymouth; and the said freighters have accordingly taken and hired the same in manner and form following (that is to say) That the said ship now is, and shall, during the intended voyage, be, at the expence of the said Thomas Ward as owner of the vessel, kept staunch, tight, and strong, well manned, victualled, tackled, and provided in every respect fit for the merchants service, and particularly for performing such a voyage (the dangers and perils of the seas, *restraints of princes and rulers*, fire and enemies, during the same, always excepted) and also that the said Thomas Ward shall, without delay, make the said ship ready to sail to Riga, and there take on board her a full and compleat cargo of masts, logs, timber, and lath wood, the goods and adventure of the said freighters, or their assigns, subject to the ship's safe arrival at London from Dantzic, and with leave to take a cargo out from the East coast of Great Britain, on her way to the Baltic, and being so loaden, the master with the ship and cargo, shall, with the first opportunity wind and weather, proceed directly for London, Chatham, Portsmouth, or Plymouth, and on her arrival there, deliver the same to the order of the said freighters, or their assigns, at such convenient place or places

where the said ship and cargo may safely come; and also that the said ship shall, for her loading and unloading at Riga and London, Chatham, Portsmouth, or Plymouth, lay fifty running days if required, and so to end the said intended voyage. In consideration of which, the said freighters do agree, not only to load and put on board the said ship the said cargo at Riga as aforesaid, and to receive or cause the same to be received from on board her at London, Chatham, Portsmouth, or Plymouth as aforesaid, and that within the days and time limited for the loading and unloading as aforesaid, but also shall and will pay, or cause to be paid unto the said Thomas Ward, or his assigns, on the good and right delivery of the said cargo at London, Chatham, Portsmouth, or Plymouth, according to bills of lading, one half in cash and the other one half in good and approved bills on London, at not exceeding four months date or payment equal thereto, in full for the freight and hire of the said ship for the said voyage, at and after the rate of five pounds five shillings per register ton, to London or Chatham; five pounds fifteen shillings and sixpence per register ton, if delivers at Portsmouth; and six pounds six shillings per register ton, if delivers her cargo at Plymouth; (orders for the port of discharge to be received at the Sound, and the ship to sail from thence with convoy) *together with the sum of seven pounds ten shillings per day, to be paid day by day, as the same shall grow due, for every day of the said ship's detention, over and above the days and time limited for her loading and unloading at Riga and London, Chatham, Portsmouth, or Plymouth, as aforesaid: as also two thirds of all port-charges and pilotage, as customary; and for the true performance hereof, each of the said parties bindeth himself, his executors, administrators, and assigns, reciprocally unto the other, especially the said Thomas Ward bindeth his said ship, her freight and appurtenances; and the said freighters their goods to be loaden on board her, each to the other in the penal sum of two thousand pounds sterling, by these presents. In witness whereof, each of the said parties hath hereunto set his hand and seal, the day and year first within written. The ship to address to Messrs. Cumming, Fenton,*
and

and Co. at Riga, and at the Sound out and home with Messrs. Airson, Fenwick, and Co.

Sealed and delivered, being
first duly stamped in the
presence of
THOMAS WILSON.

Thomas Ward L. S.
John Head for }
John Roberts & Co. } L. S.

No. III.

Extract from the Treaty of Commerce between Great Britain and Russia.

February 21st, 1797,

THE Treaty of Commerce concluded between Great Britain and Russia shortly after the accession of the late emperor PAUL to the throne of that empire, contains the following article:—
 “ If, which God forbid! *the peace* between the two high contracting parties *should be broken, the persons, the SHIPS, and the merchandize belonging to their respective subjects shall* NEITHER BE STOPPED nor *confiscated*, but AT LEAST ONE YEAR shall be granted to them to sell, dispose, or carry away their effects, and to retire themselves whenever they think proper (*which is equally to be understood of those who are either in the land or SEA SERVICE*); and it shall be permitted to them also, before or on their departure, to consign or make over such effects as they have not sold, as well as the debts which they may have to demand, to such persons as they may judge proper, to be disposed of at their will, and for their profit, which debts the debtors shall be obliged to pay, in the same manner as if the rupture had not taken place.”

No. IV.

Official Imperial Paper, published at Riga.

According to the Command of his Excellency Major General
Porow.

August 29th, 1800.

I MAKE known to your honourable Senate that His Imperial Majesty, as well on account of the violent proceedings of England against Denmark, as in consequence of an *English fleet having passed the Sound*, by which the *passage of it is blocked up*, and the *commerce of the Baltic* MAY be subjected to great inconvenience—Ordains, that as a security against any injury which the Russian trade may sustain, and as long as the real intentions of the English Court may remain unknown, *You will direct all the property of the English to be placed in a state of sequestration, and that on no account, without the permission of his Majesty, you suffer the same to be transported out of Russia*, that however no part of their property is to be taken away from them, nor they themselves disturbed in the management of their affairs of which you will take special care.

Given at the Council House, at Riga, the 29th August,
1800.

By Command,

SCHWARTZ, Secretary.

N. B. This embargo was
taken off on the 15th Sep-
tember, 1800.

No. V.

*The Petersburg Court Gazette of the 7th Nov. 1800,
contained the following most extraordinary Edit:*

*“ WHEREAS we have learned that the Island of Malta, lately
“ in the possession of the Hercule, has been surrendered to the English
“ Troops, but as it is as yet uncertain whether the agreement entered
“ into on the 30th of December, 1798, will be fulfilled according to
“ which this Island after its capture is to be restored to the order
“ of St. John of Jerusalem, of which his Majesty the Emperor
“ of all the Russias, is Grand Master, his Imperial Majesty being
“ determined to defend his rights has been pleased to command
“ that an embargo shall be laid on all English ships in the Ports of
“ his Empire, till the above mentioned convention shall be fulfilled.”*

No. VI.

*Proclamation of his Imperial Majesty, Emperor of
all the Russias, &c. &c.*

WHEREAS it has been represented by many subjects of Russia that large sums of money are due to them from *English Merchants* resident in Russia, and that payment of such debts cannot be obtained. His Imperial Majesty's College of Commerce, at St. Petersburg, by virtue of powers vested in them for the purpose of promoting an adjustment and liquidation of the debts due to the Russian merchants from the English merchants, have ordained an *especial* commission, or board of commissioners for managing *English property*, and they direct the said board to be constituted, and their operations and proceedings to be guided by the following regulations.

1. It shall consist of two Russian, two English, and two merchants of other nations, all of whom shall be men of known good character, and the English shall be chosen or selected by the English merchants, to whom shall be added one of the members of the Imperial College of Commerce in St. Petersburg.

2. All matters that come under their cognizance shall be adjusted conformably to the accustomed rules and established usage in trade; they are to decide among themselves by a majority of votes upon matters under discussion, but in case of any points involving the interests of the Russian commerce, the opinion of his Imperial Majesty's Counsellor of the College of Commerce, is to supercede the majority of votes, subject however to the concurrence of the College of Commerce.

3. Every British merchant resident in Russia without excepting such as have subscribed themselves visitors, shall deliver to the commissioners, in writing, a statement of all the balances of accounts in their books, and a schedule of effects and goods in their possession; and they shall, when required, deliver to the commissioners their books of accounts out of their accounting-houses.

4. Every Russian subject who has any claim or demand upon an Englishman, of whatever nature or kind it may be; or who is indebted to a British subject, shall transmit an account of the particulars of such debts or claims to the commissioners within four months from the date of the publication of this ordinance in the newspapers, and in default thereof the commissioners are not to take cognizance of any claims after that period.

5. The commissioners are to dispose of all English effects now sequestrated, and to receive all balances of accounts, and to bring the whole into one general mass.

6. The Russian subjects shall receive out of the fund of the English property (collected as before directed) after admission of the validity and justness of the claimants, an equal dividend upon their respective demands, and full satisfaction.

7. In case the fund of English property does not prove adequate to the demands of the Russian creditors, or that there shall

shall remain a surplus, then the result shall be communicated to the College of Commerce at St. Petersburg.

8 The Commissioners shall not be accountable or responsible for their decisions; nor shall there be any appeal from their determinations, either by petition, or in any other way on any account whatsoever.

9. To defray the expence and management of the Board of Commissioners, and for the salary of their clerks and agents, both debtors and creditors shall allow them one half per cent. upon the amount of the respective sums brought under their consideration.

St. Petersburg, the 17th November, 1800.

No. VII.

Petersburgh, November 18th and 21st, 1800.

(From the Court Gazette.)

“ THE crews of two English ships in the harbour of Narva, ON THE ARRIVAL OF A MILITARY FORCE TO PUT THEM UNDER ARREST in consequence of the embargo laid on them, having made resistance, fired pistols and forced a Russian sailer into the water, and afterwards weighed anchor and sailed away, his Imperial Majesty has been pleased to order that the remainder of the vessels in that harbour shall be burned.”

“ His Imperial Majesty having received from his Chamberlain, Stalinskoi, at Palermo, an account of the taking of Malta, has been pleased to direct that the following note, shall be transmitted to all the diplomatic corps residing at his court, by the minister presiding in the College for Foreign Affairs, Count Rostopshin, and the Vice Chancellor Count Panin.”

“ His Majesty the Emperor of all the Russias has received circumstantial accounts respecting the surrender of Malta, by which it is actually confirmed, that the English Generals notwithstanding

ing the repeated remonstrances on the part of his Majesty's ministers at Palermo, as well as from the ministry of his Sicilian Majesty, have taken possession of Valetta and of the Island of Malta, in the name of the King of Great Britain, and have hoisted his flag *only*. His Imperial Majesty's just indignation having been raised by this violation of good confidence, *he has resolved not to take off the embargo that has been laid on all English vessels in the Russian Ports, until the agreement of the convention concluded in 1798 shall have been completely carried into execution.*"

No. VIII.

British Prisoners in Russia.

The following Letter appeared in several of the English Newspapers, addressed to their respective Editors.

"VARIOUS reports having been circulated, respecting the unfortunate British subjects now in Russia, I send you the following authentic information, which I request you will insert in your paper: the persons of the British Merchants have hitherto remained unmolested, and what ready money they had in their possession has not been seized, but their warehouses are sealed, and all their property is under sequestration; all the British ships and their cargoes are seized by the Russian Government, the captains and crews are marched into the interior of the country, in companies of one captain and ten or twelve seamen, they are distributed in above one hundred different towns at one hundred to one thousand miles distance from the Capital. The Russian Government allow for their subsistence daily, five copeaks in money (about three half-pence) a small measure of rye flour and one of buck wheat. My Brother and some other British Merchants at St. Petersburg, advanced forty thousand rubles (a ruble is about half a crown) for their better accommodation, from which he furnished every captain with two hundred

* The crews of the ships detained at Cronstadt.

rubles, for the use of himself and ten men, and bought for every man a sheep's-skin coat, a fur cap, a sash, a pair of gloves, some warm shoes and two pair of stockings. Kibirkas or common carts of the country, are bought for most of the captains and some old men, the rest walk, and the peasants furnish horses for the baggage. By the 21st of November, fifty captains and five hundred sailors, were thus dispatched from St. Petersburg, and the remainder were daily setting off, on their melancholy journey.

STEPHEN SHAIRP, Consul-General
in Russia.

No. 73, Gower Street,
December 17th, 1800.

No. IX.

*Extract from the London Gazette, from Tuesday 13th,
to Saturday 17th January, 1801,*

At the Court of Saint JAMES's, the 14th of JANUARY, 1801,
PRESENT,

The KING's Most Excellent MAJESTY in Council.

WHEREAS his Majesty has received advice, that a large number of vessels belonging to his Majesty's subjects, have been and are detained in the ports of Russia, and that the British sailors navigating the same, have been and now are detained as Prisoners in different parts of Russia, and also that during the continuance of these proceedings, a confederacy of a hostile nature, against the just rights and interests of his Majesty and his dominions, has been entered into with the court of St. Petersburg, by the courts of Denmark and Sweden respectively. His Majesty with the advice of his Privy Council, is thereupon pleased to order, as it is hereby ordered, that no ships or ves-

sels belonging to any of his Majesty's subjects, be permitted to enter and clear out for any of the ports of Russia, Denmark or Sweden, until further order. And his Majesty is further pleased to order that a general embargo or stop be made of all Russians, Danish and Swedish ships and vessels whatsoever, now within or which hereafter shall come into any of the ports, harbours or roads within the united kingdom of Great Britain and Ireland, together with all persons and effects on board the said ships and vessels, but that the utmost care be taken for the preservation of all and every part of the cargoes, on board any of the said ships and vessels, so that no damage or embezzlement whatever, be sustained, and the right honourable the lords commissioners of his Majesty's Treasury, the lords commissioners of the Admiralty, and the lord warden of the Cinque Ports, are to give the necessary direction herein, as to them respectfully appertain.

W. FAWKENER.

No. X.

At the QUEEN'S HOUSE, the 16th JANUARY, 1801,

PRESENT,

The KING's Most Excellent MAJESTY in Council.

WHEREAS his Majesty has received advice, that a large number of vessels, belonging to his Majesty's subjects, have been and are detained in the ports of Russia, and that the property of his Majesty's subjects in Russia, has by virtue of several orders and decrees of the Russian government particularly one, bearing date the 29th of November last, O. S. (corresponding with the 10th of December, N. S.) been seized and directed to be applied in violation of the principles of justice, and of the rights of the several persons interested therein; his Majesty with the advice of his Privy Council, is thereupon please

pleased to order, as it is hereby ordered, that no bills drawn since the said 29th of November last, O. S. (corresponding with the 10th of December, N. S.) by or on behalf of any persons being subjects of or residing in the dominions of the Emperor of Russia, shall be accepted, or paid, without licence from one of his Majesty's principal Secretaries of State, first had in that behalf, until further signification of his Majesty's pleasure, or until provision shall be made in respect thereof, by act of parliament, whereof all persons concerned, are to take notice, and govern themselves accordingly.

W. FAWCETT.

No. XI.

*Extract from his Majesty's Speech in Parliament,
2d of February, 1801.*

“ THE unfortunate course of events on the continent, and the consequences which must be expected to result from it, cannot fail to be matter of anxiety and concern, to all who have a just feeling for the security and independence of Europe.

“ YOUR astonishment as well as your regret, must be excited by the conduct of those powers whose attention at such a period appears to be more engaged in endeavours, to weaken the naval force of the British Empire, which has hitherto opposed so powerful an obstacle, to the inordinate ambition of France, than in concerting the means of mutual defence, against their common and increasing danger.

“ THE representations which I directed to be made to the court of Peterburgh, in consequence of the outrages committed against the ships, property, and persons of my subjects, have been treated with the utmost disrespect, and the proceedings of which I complained have been aggravated by subsequent acts
of

of injustice and violence ; under these circumstances, a convention has been concluded by that court, with those of Copenhagen and Stockholm, the object of which, as avowed by one of the contracting parties, is to renew their former engagements, for establishing by force, a new code of maritime law, inconsistent with the rights, and hostile to the interest of this country.

" In this situation I could not hesitate as to the conduct which it became me to pursue. I have taken the earliest measures to repel the aggressions of this hostile confederacy, and to support those principles, which are essential to the maintenance of our naval strength, and which are grounded on the system of public law, so long established and recognized in Europe.

" I have at the same time, given such assurances as manifest my disposition to renew my ancient relations with those powers whenever it can be done, consistently with the honor of my crown, and with a just regard to the safety of my subjects; you will, I am persuaded omit nothing on your part, that can afford me the most vigorous and effectual support, in my determination, to maintain to the utmost, against every attack, the naval rights and the interests of my empire."

No. XII.

Proclamation of the present Emperor of Russia.

WE, by the grace of God, Alexander the First, Emperor and Autocrat of all the Russias, &c. &c. &c.

IT has pleased the decrees of the Almighty, to shorten the life of our beloved Parent, Sovereign Emperor PAUL PETROVITZ, who died suddenly, by an apoplectic stroke, at night, between the 11th and 12th of this month. We on receiving the hereditary imperial throne, of all the Russias, do receive
also

also at the same time; the obligations to govern the people committed to us; by the Almighty; according to the laws, and the heart of her, who rests in God, our most august Grand-mother, sovereign Empress CATHARINE the Great, whose memory will be ever dear to us, and the whole country following the steps of her wise intentions, we hope to arrive at the object of raising Russia to the height of glory, and to procure an uninterrupted happiness to all our faithful subjects, whom we do hereby invite to seal their fidelity to us, by an oath before the face of Almighty God, whose assistance we implore, to grant us power to bear the weight now pressing upon us.

Given at our Court of St. Petersburg, this 12th day of March, 1801. O. S.

ALEXANDER.

No. XXII.

DÉCLARATION.

Quoique l'intention magnanime de S. M. l'Empereur de Toutes les Russies de rendre pleine, et entieré justice aux sujets Britanniques, qui ont essuyé des pertes pendant les troubles qui ont alteré la bonne intelligence entre son Empire et la Grande Brétagne, soit, déjà constatée par les faits, S. M. I. ne consultant que sa loyauté, a autorisé encore le plénipotentiaire soussigné à déclarer, comme Il declare par la présente :

Que tous les *navires*, les marchandises et les propriétés des Sujets Britanniques, qui avaient été mis en *sequestre* sous le dernier regne en Russie, seront non Seulement fidèlement restitués, aux dits sujets Britan-

Britanniques, ou à Leurs Commettans, mais que pour les effets qui auroient été aliénés d'une manière quel-conque, et qui ne pourraient plus être rendus en nature, il sera accordé aux Proprietaires un équivalent convenable lequel sera déterminé ultérieurement d'après les regles de l'équité.

En foi de quoi nous Plénipotentiaire de S. M. I. de toutes les Russies avons signé la présente déclaration, et y avons fait opposer le Sceau de nos Armes :

Fait à St. Peterbourg le 17 Juin, 1801.

(signé)

Le Comte de PANIN.

Extract from the preceding Declaration of his Majesty the Emperor of all the Russias, &c.

“ THAT all the ships, merchandize, and property of British subjects, or their agents which have been put under *sequestration* under the late reign in Russia, shall not only be faithfully restored, but that the effects which have been alienated in any manner whatsoever, and which cannot be given back in their original state, the owners thereof shall receive an equivalent, to be determined according to the rules of justice.”

No. XIV.

Convention of St. Petersburg, between England and Russia, concluded 5th June (17th) 1801.

“ IN the name of the Most Holy and Undivided Trinity; the mutual desire of his Majesty the Emperor of all the Russias, and of his Majesty the King of the united kingdom of Great Britain and Ireland, being not only come to an understanding between themselves with respect to the differences which have lately interrupted the good understanding and friendly relations which subsisted between the two states, but also to prevent, by frank and precise explanations upon the navigation of their respective subjects the renewal of similar altercations and troubles which might be the consequence of them; and the object of the solicitude of their said Majesties being to settle, as soon as can be done, an equitable arrangement of those differences, and an invariable determination of their principles upon the rights of neutrality in their application to their respective monarchies, in order to unite more closely the ties of friendship and good intercourse of which they acknowledge the utility and the benefits, have named and chosen for their plenipotentiaries, viz. his majesty the Emperor of all the Russias the Sieur NIQUITA, Count de PANIN, his counsellor, &c. and his majesty the King of the united kingdom of Great Britain and Ireland ALLEYN, Baron St. Helen's, privy counsellor, &c. who after having communicated their full powers, and found them in good and due form, have agreed upon the following points and articles:

ART. I. There shall be hereafter between his Imperial Majesty of all the Russias and his Britannic Majesty, their subjects, the states and countries under their denomination, good and unalterable friendship and understanding, and all the political, commercial, and other relations of common utility between the respective subjects, shall subsist as formerly, without their being disturbed or troubled in any manner whatever.

2. His Majesty the Emperor and his Britannic Majesty declare, that they will take the most especial care of the execution of the prohibitions against the trade of contraband of their subjects, with the enemies of each of the high contracting parties.

3. His Imperial Majesty of all the Russias and his Britannic Majesty, having resolved to place under a sufficient safeguard the freedom of commerce and navigation, of their subjects, in case one of them shall be at war whilst the other shall be neutral, have agreed—

1. That the ships of the neutral power shall navigate freely to the ports and upon the coasts of the nations at war.

2. That the effects embarked on board neutral ships shall be free, with the exception of contraband of war, and of enemy's property; and it is agreed, not to comprize in the number of the latter, the merchandize of the produce, growth, or manufacture of the countries at war, which should have been acquired by the subjects of the neutral power, and should be transported for their account, which merchandize cannot be excepted in any case from the freedom granted to the flag of the said power.

3. That in order to avoid all equivocation and misunderstanding of what ought to be qualified as contraband of war, his Imperial Majesty of all the Russias, and his Britannic Majesty declare, conformably to the 11th article of the *Treaty of Commerce concluded between the two crowns, on the 10th (21st) February, 1797*, that they acknowledge as such, only the following objects, viz. cannons, mortars, fire-arms, pistols, bombs, grenades, balls, bullets, firelocks, flints, matches, powder, saltpetre, sulphur, helmets, pikes, swords, sword-belts, saddles and bridles, excepting however the quantity of the said articles which may be necessary for the defence of the ship, and of those who compose the crew, and all other articles whatever not enumerated here, shall not be reputed warlike and naval ammunition, nor be subject to confiscation, and of course shall pass freely without being subjected to the smallest difficulty, unless they be considered enemy's property in the

above

above settled sense. It is also agreed, that that which is stipulated in the present article shall not be to the prejudice of the particular stipulations of one or the other crown, with other powers, by which objects of a similar kind should be reserved, prohibited, or permitted.

4. That in order to determine what characterises a blockaded port, that determination is given only to that where there is, by the disposition of the power which attacks it with ships *stationary*, or sufficiently near an evident danger in entering.

5. That the ships of the neutral power, shall not be stopped but upon just causes and evident facts, that they be tried without delay, and that the proceedings be always uniform, prompt, and legal.

In order the better to insure the respect due to these stipulations, dictated by the sincere desire of conciliating all Interests, and to give a new proof of their loyalty and love of justice, the high contracting parties enter here into the most formal engagement, to renew the severest prohibitions to their captains, whether of ships of war, or merchantmen, to take, keep, or conceal on board their ships, any of the objects which in the terms of the present convention, may be reputed contraband, and respectively to take care of the execution of the orders, which they shall have published in their admiralties, and wherever it shall be necessary.

4. The two high contracting parties wishing to prevent all subjects of dissention in future, by limiting the right of search of merchant ships going under convoy, to the sole causes in which the belligerent power may experience a real prejudice, by the abuse of the neutral flag, have agreed—

1. That the right of searching merchant ships, belonging to the subjects of one of the contracting powers, and navigating under convoy of a ship of war of the said power, shall only be exercised by ships of war of the belligerent party, and shall never extend to the *fitters out of privateers*, or other vessels which do not belong to the imperial or royal fleet of their Majesty's but which their subjects shall have fitted out for war.

2. That the proprietors of all merchant ships belonging to the subjects of one of the contracting sovereigns, which shall be destined to sail under convoy of a ship of war, shall be required *before they receive their sailing orders*, to produce to the commander of the convoy, their passports, and certificates, or sea letters, in the form annexed to the present treaty.

3. That when such ships of war, and every merchant ship under convoy, shall be met with by a ship or ships of war, of the other contracting party, who shall then be in a state of war, in order to avoid all disorder, they shall keep out of common shot, unless the situation of the sea, or the place of meeting render a nearer approach necessary, and the commander of the ship of the belligerent power, shall send a sloop on board the convoy, where they shall proceed reciprocally to the verification of the papers and certificates, that are to prove on one part, that the ship of war is authorized to take under its escort, such or such merchant ships of its nation, laden with such a cargo, and for such a port, on the other part, that the ship of war of the belligerent party, belongs to the imperial or royal fleet of their majesties.

4. This verification made there, shall be no pretence for any search if the papers are found in due form, and if there exists no good motive for suspicion. In the contrary case, the captain of the neutral ship of war (being duly required thereto by the captain of the ship of war, or ships of war of the belligerent power) is to bring to and detain his convoy during the time necessary for the search of the ships which compose it, and he shall have the faculty of naming and delegating one or more officers to assist at the search of the said ships, which shall be done in his presence on board each merchant ship conjointly with one or more officers selected by the captain of the ship of the belligerent party.

5. If it happen that the captain of the ship or ships of war, of the power at war having examined the papers found on board, and having interrogated the master and crew of the ship, shall see just and sufficient reason to detain the merchant ship, in order to proceed to an ulterior search, he shall notify that intention to the captain of the convoy, who shall have the

the power to order an officer to remain on board the ship thus detained, and to assist in the examination of the cause of her detention. The merchant ship shall be carried immediately to the nearest and most convenient port belonging to the belligerent power, and the ulterior search shall be carried on with all possible diligence.

5. It is also agreed that if any merchant ship thus convoyed, should be detained without just and sufficient cause, the commander of the ship or ships of war of the belligerent power, shall not only be bound to make to the owners of the ship and of the cargo, a full and perfect compensation for all the losses, expences, damages and costs occasioned by such a detention, but shall further be liable to *an ulterior punishment*, for every act of violence, or other fault which he may have committed, according as the nature of the case may require; on the other hand no ship of war with a convoy, shall be permitted under any pretext whatsoever, to resist by force the detention of a merchant ship or ships by the ship or ships of war of the belligerent power, an obligation which the commander of a ship of war with convoy is not bound to observe *towards privateers and their fitters out*.

6. The high contracting powers shall give precise and efficacious orders, that the sentences upon prizes made at sea shall be conformable with the rules of the most exact justice and equity, that they shall be given by judges above suspicion, and who shall not be interested in the matter. The government of the respective states, shall take care that the said sentences shall be promptly and duly executed according to the forms prescribed; in case of the unfounded detention or other contravention of the regulations stipulated by the present treaty, the owners of such a ship and cargo shall be allowed damages proportioned to the loss occasioned by such a detention. The rules to observe for these damages, and for the case of unfounded detention, as also the principles to follow for the purpose of accelerating the process, shall be the matter of additional articles, which the contracting parties agree to settle between them, and which shall have the same force and validity, as if they were inserted in the present act. For this effect their Imperial and
Britannic

Britannic Majesties mutually engage to put their hand to the salutary work, which may serve for the completion of these stipulations, and to communicate to each other without delay the views which may be suggested to them by their equal solicitude to prevent the least grounds for dispute in future.

7. To obviate all the inconveniences which may arise from the bad faith of those who avail themselves of the flag of a nation ~~without~~ belonging to it, it is agreed to establish for an inviolable rule, that any vessel whatever to be considered as the property of the country ~~the~~ *flag* of which it carries, ~~must have on board the captain of the ship, and one half of the crew of the people of that country, and the papers and passports in due and perfect form,~~ but every vessel which shall not observe this rule, and which shall infringe the ordinances published on that head, shall lose all rights to the protection of the contracting powers.

8. The principles and measures adopted by the present act, shall be alike applicable to all the maritime wars, in which one of the two powers may be engaged, whilst the other remains neutral; these stipulations shall in consequence be regarded as permanent, and shall serve for a constant rule to the contracting powers in matters of commerce and navigation.

9. His Majesty the King of Denmark and his Majesty the King of Sweden, shall be immediately invited by his Imperial Majesty in the name of the contracting parties, to accede to the present convention, and at the same time to renew and confirm their respective treaties of commerce with his Britannic Majesty, and his said Majesty engages by acts which shall have established that agreement, to render and restore to each of these powers all the prizes that have been taken from them as well as the territories and countries under their domination which have been conquered by the arms of his Britannic Majesty since the ruptures, *in the state in which those possessions were found* at the period at which the troops of his Britannic Majesty entered them. The orders of his said Majesty for the restitution of those prizes and conquests shall be immediately expedited after the exchange of the ratifications of the acts by

by which Sweden and Denmark shall accede to the present treaty.

10. The present convention shall be ratified by the two contracting parties, and the ratifications exchanged at St. Petersburg, in the space of two months at furthest from the day of the signature.

In the faith of which the respective plenipotentiaries have caused to be made two copies perfectly similar, signed with their hands and sealed with their arms.

Done at St. Petersburg, the 5th (17th) June, 1801.

(L. S.)

N. Count de PANIN.

(L. S.)

ST. HELENS.

FORMULA of the Passports and Sea-Letters which are to be delivered in the respective Admiralties of the States of the two high contracting Parties, to the Ships of War and Merchant Vessels which shall sail from them, conformable to Article Four of the present Treaty.

BE it known, that we have given leave and permission to N. of the city or place of N. master and conductor of the ship N. belonging to N. of the port of N. of — tons, or thereabouts, now laying in the port or harbour of N. to sail from thence to N. laden with N on account of N. after the said ship shall have been visited, before its departure, in the usual manner, by the officers appointed for that purpose; and the said N. or such other as shall be vested with powers to replace him, shall be obliged to produce in every port or harbour which he shall enter with the said vessel, to the officers of the place the present licence, and to carry the flag of N. during his voyage.

In faith of which, &c.

COPY of the first separate Article of the Convention with the Court of London, signed the 5th (17th) of June, 1801.

THE pure and magnanimous intentions of his Majesty the Emperor of all the Russias, having already induced him to restore the vessels and goods of British subjects which had been sequestered in Russia, his said Majesty *confirms that disposition in its whole extent*, and his Britannic Majesty engages also to give immediately orders for taking off all sequestration laid upon the Russian, Danish, and Swedish properties, detained in English ports; and to prove still more his sincere desire to terminate amicably the differences which have arisen between Great Britain and the Northern Courts, and in order that no new incident may throw obstacles in the way of this salutary work, his Britannic Majesty binds himself to give orders to the commanders of his forces by land and sea, that the armistice now subsisting with the courts of Denmark and Sweden shall be prolonged for a term of three months from the day of this day; and his Majesty the Emperor of all the Russias, guided by the same motives, undertakes in the name of his allies, to have this armistice maintained during the said term.

This separate article, &c. in faith of which, &c.

COPY of the second separate Article of the Convention with the Court of London, signed at St. Petersburg the 5th (17th) of June, 1801.

THE differences and misunderstandings which subsisted between his Majesty the Emperor of all the Russias, and his Majesty the King of the united kingdom of Great Britain and Ireland, being thus terminated, and the precautions taken by the present convention not giving further room to fear that they may be able to disturb in future the harmony and good understanding which the two high contracting parties have agreed to consolidate, their said Majesties *confirm anew*, by the pre-

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sent convention, the *Treaty of Commerce* of the 10th of February (21st) 1797, of which *all the stipulations are here repeated to be maintained in their whole extent.*

This separate article, &c. in faith of which, &c,

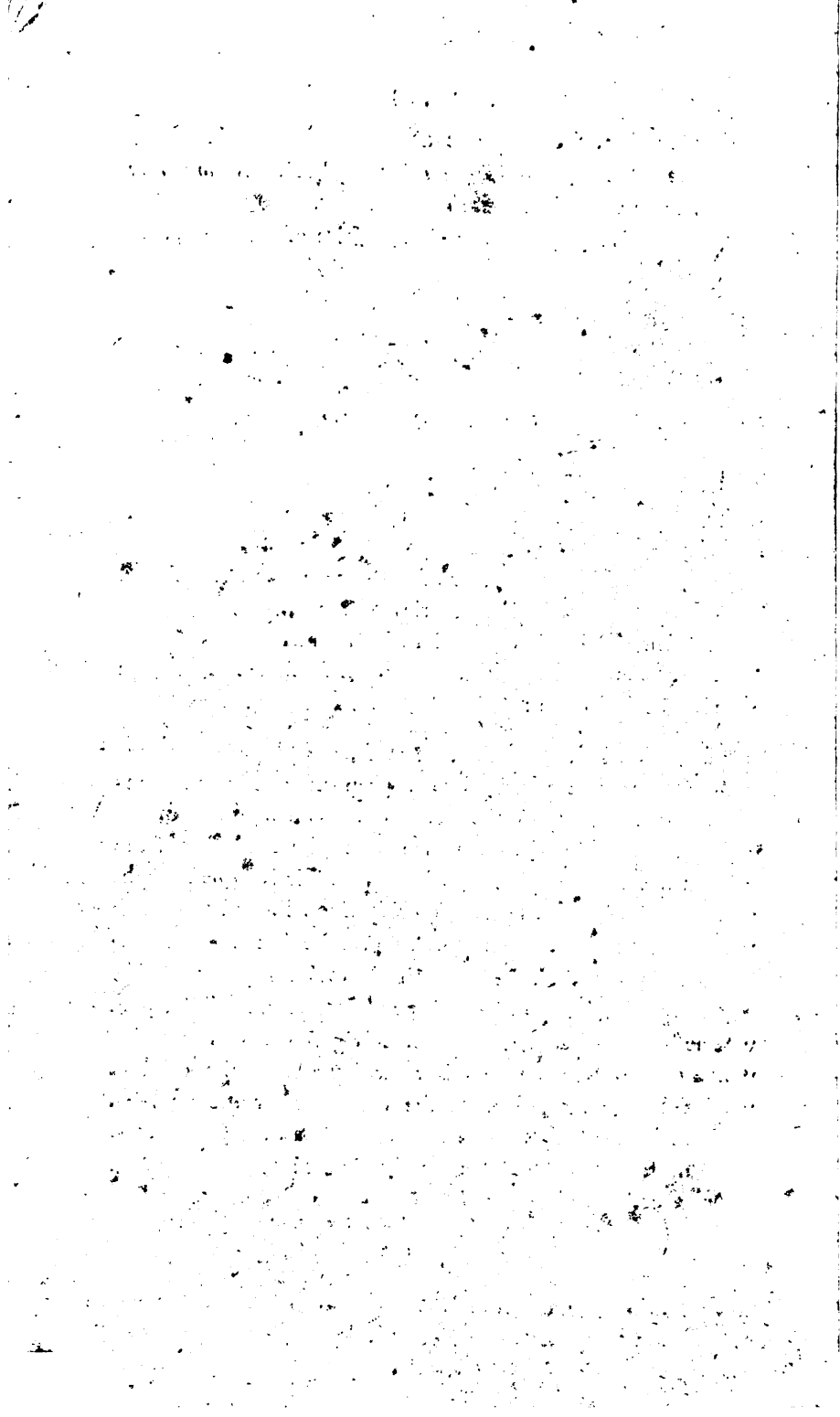
No. XV.

Subsequent Convention with Russia.

ON the 20th of October, 1801, some supplementary articles to the convention concluded on the 17th of June, 1801, between his Majesty the King of the united kingdom of Great Britain and Ireland, and the Emperor of all the Russias, were signed at Moscow by the plenipotentiaries of the two powers, and afterwards ratified by his Imperial Majesty at Petersburg, 4th January, 1802. The hitherto-unknown substance of them is stated to be as follows :

“ IF a ship is detained without cause, the proprietors of the
 “ ship and cargo are entitled to a proportionate indemnifica-
 “ tion for every day of the detention. When either of the
 “ powers complain of the sentence which the admiralty of the
 “ other has passed respecting prizes, the affair is to be brought
 “ in England before the King’s Privy Council, and in Russia
 “ before the Senate. Both powers promise that disputes con-
 “ cerning prizes shall be determined as soon as possible. No
 “ part of the prize shall be sold or unloaded before the decision.
 “ The freedom of commerce or navigation does not entitle
 “ neutrals to transport goods *immediately* from the colonies
 “ of a belligerent power to the continent, or the contrary.
 “ The neutral powers shall however enjoy all the privileges of
 “ the most favoured nations, as the United States of North
 “ America.”

F I N I S.





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